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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR: TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37 B

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Introduction

1. The mandate of the Special Rapporteur on torture, assigned since April 1993 to Mr. Nigel S. Rodley (United Kingdom), was renewed for three more years by the Commission on Human Rights in its resolution 1995/37 B. In conformity with this resolution and with resolution 1996/33 B, the Special Rapporteur hereby presents his fourth report to the Commission. Chapter I deals with a number of aspects pertaining to the mandate and methods of work. Chapter II summarizes his activities during 1996. Chapter III consists mainly of a review of the information transmitted by the Special Rapporteur to Governments, as well as the replies received, from 15 December 1995 to 15 December 1996. Chapter IV contains conclusions and recommendations.

2. In addition to the above-mentioned resolutions, several other resolutions adopted by the Commission on Human Rights at its fifty-second session are also pertinent within the framework of the mandate of the Special Rapporteur and have been taken into consideration in examining and analysing the information brought to his attention. These resolutions are, in particular: resolution 1996/20, "Rights of persons belonging to national or ethnic, religious and linguistic minorities"; resolution 1996/32, "Human rights in the administration of justice, in particular of children and juveniles in detention"; resolution 1996/46, "Human rights and thematic procedures"; resolution 1996/47, "Human rights and terrorism"; resolution 1996/48, "Question of integrating the rights of women throughout the United Nations system"; resolution 1996/49, "The elimination of violence against women"; resolution 1996/51, "Human rights and mass exoduses"; resolution 1996/52, "Internally displaced persons"; resolution 1996/53, "Right to freedom of opinion and expression"; resolution 1996/55, "Advisory services, technical cooperation and the Voluntary Fund for Technical Cooperation in the Field of Human Rights"; resolution 1996/62, "Hostage-taking"; resolution 1996/78, "Comprehensive implementation of and follow-up to the Vienna Declaration and Programme of Action"; resolution 1996/85, "Rights of the Child".

I. MANDATE AND METHODS OF WORK

A. The mandate

3. There have been no changes to the mandate of the Special Rapporteur, which is primarily concerned with torture, as well as with what the first Special Rapporteur, Professor Peter Kooijmans, described as the "grey zone" between torture and other forms of cruel, inhuman and degrading treatment or punishment (see E/CN.4/1986/15, para. 33). Among the phenomena understood as falling within the "grey zone" was that of corporal punishment and it has been the general practice under the mandate to take up cases involving corporal punishment, usually by means of the urgent appeal method.

4. However, as indicated in the addendum to this report (E/CN.4/1997/7/Add.1, para. 435), the Government of Saudi Arabia has contested the basis of the Special Rapporteur's concern with corporal punishment. Informal contacts with Governments and non-governmental organizations have also suggested a more generalized interest in the conceptual issues raised by

the relationship of the practice to the mandate of the Special Rapporteur. Accordingly, the following paragraphs aim to address the matter.

5. The Special Rapporteur throughout his tenure has received substantial information on the practice of corporal punishment in a number of countries. The information pertains to a variety of methods of punishment, including flagellation, stoning, amputation of ears, fingers, toes or limbs, and branding or tattooing. With respect to the practice in some countries, the authority for the imposition and execution of the punishment derives from legislation or executive decree having the force of legislation. The legal provisions in question envisage the infliction of corporal punishment as an ordinary criminal sanction, either alternative to or in combination with other sanctions such as fine or imprisonment. In some countries the provisions are to be found in administrative regulation, such as that contained in prison manuals in respect of disciplinary offences. In other instances, informal or quasi-official agencies, such as ad hoc village tribunals or religious courts, have pronounced sentences of corporal punishment which appear to be extrinsic to the State's constitutional criminal justice system. In respect of these latter cases, the State must be considered responsible for the consequences of these sentences, if they are carried out with its authorization, consent or acquiescence.

6. The Special Rapporteur takes the view that corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment enshrined, inter alia, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Accordingly, the Special Rapporteur has made a number of urgent appeals on behalf of persons who had been sentenced to corporal punishment, requesting that the concerned Government not carry out the sentence. He has also brought to the attention of a number of Governments information he received on the general practice of corporal punishment in their respective countries, as well as individual cases in respect of which such punishment had been carried out.

7. The Special Rapporteur is aware of the view held by a small number of Governments and legal experts that corporal punishment should not be considered to constitute torture or cruel, inhuman or degrading treatment or punishment, within the meaning of the obligation of States under international law to refrain from such conduct. Some proponents of the proposition that corporal punishment is not necessarily a form of torture argue that support for their position may be found in article 1 of the Convention against Torture, wherein torture is defined for the purposes of the Convention. That definition excludes from the ambit of proscribed acts those resulting in "pain or suffering arising only from, inherent in or incidental to lawful sanctions". Thus, the argument proceeds, if corporal punishment is duly prescribed under its national law, a State carrying out such punishment cannot be considered to be in breach of its international obligations to desist from torture.

8. The Special Rapporteur does not share this interpretation. In his view, the "lawful sanctions" exclusion must necessarily refer to those sanctions that constitute practices widely accepted as legitimate by the international community, such as deprivation of liberty through imprisonment, which is common to almost all penal systems. Deprivation of liberty, however unpleasant, as long as it comports with basic internationally accepted standards, such as those set forth in the United Nations Standard Minimum Rules for the Treatment of Prisoners, 1/ is no doubt a lawful sanction. By contrast, the Special Rapporteur cannot accept the notion that the administration of such punishments as stoning to death, flogging and amputation - acts which would be unquestionably unlawful in, say, the context of custodial interrogation - can be deemed lawful simply because the punishment has been authorized in a procedurally legitimate manner, i.e. through the sanction of legislation, administrative rules or judicial order. To accept this view would be to accept that any physical punishment, no matter how torturous and cruel, can be considered lawful, as long as the punishment had been duly promulgated under the domestic law of a State. Punishment is, after all, one of the prohibited purposes of torture. Moreover, regardless of which "lawful sanctions" might be excluded from the definition of torture, the prohibition of cruel, inhuman or degrading punishment remains. The Special Rapporteur would be unable to identify what that prohibition refers to if not the forms of corporal punishment referred to here. Indeed, cruel, inhuman or degrading punishments are, then, by definition unlawful; so they can hardly qualify as "lawful sanctions" within the meaning of article 1 of the Convention against Torture.

9. As regards corporal punishment used for offences against prison discipline, the Special Rapporteur considers that the peremptory language of rule 31 of the Standard Minimum Rules for the Treatment of Prisoners reflects the international prohibition of cruel, inhuman or degrading punishment: "Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences."

10. The Special Rapporteur cannot ignore the objections advanced by some commentators that certain religious law and custom, such as that arising from Shari'a, as interpreted by some Governments, requires the application of corporal punishment in practice and that this exigency overrides any interpretation of the norm against torture which would effectively outlaw corporal punishment. While the Special Rapporteur cannot claim any competence to deal with questions of religious law, he does take note of the fact that there exists a great divergence of views among Islamic scholars and clerics concerning the obligations of States to implement corporal punishment. In this respect, he notes that the overwhelming majority of member States of the Organization of the Islamic Conference do not have corporal punishment in their domestic laws. He stresses that all States have accepted the principle that human rights are universal, most notably in the Vienna Declaration and Programme of Action. In part II, paragraph 56 of the Vienna Declaration and Programme of Action, the World Conference on Human Rights authoritatively "... reaffirms that under human rights law and international humanitarian law, freedom from torture is a right which must be protected under all circumstances ...". As there is no exception envisaged in international human rights or humanitarian law for torturous acts that may be part of a scheme of

corporal punishment, the Special Rapporteur must consider that those States applying religious law are bound to do so in such a way as to avoid the application of pain-inducing acts of corporal punishment in practice. In this connection, he draws attention to the axiomatic doctrine that a State may not invoke the provisions of its national law to justify non-compliance with international law.

11. The Special Rapporteur notes support for his view in the position of the Human Rights Committee, which has affirmed on at least two occasions that the prohibition on torture and cruel, inhuman or degrading treatment or punishment contained in article 7 of the International Covenant on Civil and Political Rights extends to corporal punishment. 2/ Furthermore, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in resolution 1984/22, recommended to the Commission on Human Rights to urge Governments of States which maintain the penalty of amputation "to take appropriate measures to provide for other punishment consonant with article 5 [of the Universal Declaration of Human Rights]". The United Nations General Assembly has also addressed the issue with respect to the administration of Trust Territories, recommending in resolutions 440 (V) of 2 December 1950 and 562 (VI) of 18 January 1952 that immediate measures be taken to abolish corporal punishment in the Trust Territories. Corporal punishment is plainly prohibited in the context of international armed conflict by the Third and Fourth Geneva Conventions and Additional Protocol I and, in non-international armed conflict, by Additional Protocol II. Finally, various organs of the Commission on Human Rights have contested resort to corporal punishment, including the previous Special Rapporteur on torture (see E/CN.4/1993/26, para. 593), the Special Rapporteur on the situation of human rights in Afghanistan (see A/51/481, annex, para. 81), the Special Representative on the situation of human rights in the Islamic Republic of Iran (see E/CN.4/1991/35, para. 494), the Special Rapporteur on the situation of human rights in Iraq (E/CN.4/1995/56, para. 32; E/CN.4/1996/61, para. 29; A/51/496, annex, para. 108), and the Special Rapporteur on the situation of human rights in the Sudan (E/CN.4/1994/48, paras. 59-61).

B. Methods of work

12. The Special Rapporteur has continued to follow the methods of work described in the first report of his tenure (E/CN.4/1994/31, chap. I) and approved by the Commission in its resolutions 1994/37, paragraph 13, 1995/37 B, paragraph 6 and 1996/33 B, paragraph 6. In the light of frequent requests from governmental and non-governmental sources for information concerning the methods of work of the Special Rapporteur, a recapitulation of the methods is contained in Annex 1 to this report.

13. The Special Rapporteur has continued the recent practice of cooperating with the holders of other Commission mandates to avoid duplication of activity in respect of country-specific initiatives. Thus, he has sent urgent appeals to Governments in conjunction with the following mechanisms: Working Group on Arbitrary Detention; Special Rapporteurs on extrajudicial, summary or arbitrary executions; on the independence of judges and lawyers and on freedom of opinion and expression; Special Representative of the Secretary-General on internally displaced persons; Special Rapporteurs on the situation of human rights in Burundi, Cuba, Myanmar, the Sudan, the former Yugoslavia and Zaire;

Special Representative on the situation of human rights in the Islamic Republic of Iran; Chairman of the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

14. During the period under review the Special Rapporteur undertook missions to Pakistan (23 February-3 March 1996), Venezuela (7-16 June 1996) and, in respect of East Timor, Portugal (5 and 6 September 1996). The reports of the visits to Pakistan and Venezuela may be found in addenda 2 and 3, respectively, to the present report. Information on the visit to Portugal may be found in paragraphs 95-109 of the present report. Outstanding requests for invitations to visit Cameroon, China, India, Indonesia and Turkey remained uncomplied with. The Government of Mexico responded positively to the Special Rapporteur's request of last year and offered a date in 1996 that, unfortunately, was not reconcilable with the Special Rapporteur's existing commitments. The Special Rapporteur hopes that the visit will be able to be arranged early in 1997. Meanwhile, the Special Rapporteur this year sought an invitation from the Government of Kenya, a request he followed up in a meeting with the country's Permanent Representative to the United Nations Office at Geneva.

15. Within the framework of related activities of the Commission on Human Rights, the Special Rapporteur participated in the third meeting of special rapporteurs/special representatives/experts and chairpersons of working groups of the special procedures of the Commission on Human Rights and of the advisory services programme, which took place from 28 to 30 May 1996. He also attended the Commission's open-ended working group on a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He drew attention to a number of factors he considered essential for the sort of preventive scheme contemplated by the draft protocol. His points are reflected in the report of the Working Group (E/CN.4/1997/33). He also took advantage of these visits to Geneva for consultations with the Secretariat. In addition, he visited the Centre for Human Rights in Geneva from 5 to 9 August and 16 to 21 December 1996 for consultations with the Secretariat, Governments and non-governmental organizations.

16. The Special Rapporteur also attended part of the fifth session of the Commission on Crime Prevention and Criminal Justice which took place in Vienna from 21 to 31 May 1996. Of particular relevance to his mandate were agenda items under which reports on the responses of Governments to questionnaires on the Standard Minimum Rules for the Treatment of Prisoners and on the Code of Conduct for Law Enforcement Officials were discussed. From 4 to 6 September 1996, he participated in an international conference in Stockholm organized by Amnesty International on means of combating torture.

17. Finally, the Special Rapporteur draws attention to changes in the format of his annual report. In most respects it follows the format of last year's report for the reasons given therein (E/CN.4/1996/35, para. 8). This year, however, addendum 1, which contains summaries of individual cases taken up, is reproduced in the official languages of the organization, an improvement for which the Special Rapporteur is most grateful. However, he has had to reduce

even more the amount of space given to the already abbreviated summaries of allegations and of government responses, because of the further page limitation now imposed on the addendum.

III. INFORMATION REVIEWED BY THE SPECIAL RAPPORTEUR WITH RESPECT TO VARIOUS COUNTRIES

18. During the period under review, the Special Rapporteur sent 68 letters to 61 Governments containing some 669 cases (about 67 known to be women and about 55 known to be minors) or incidents of alleged torture. He also transmitted 130 urgent appeals to 45 countries on behalf of some 490 individuals (at least 50 known to be women and 10 known to be minors), as well as several groups of persons with regard to whom fears that they might be subjected to torture had been expressed. Together with individual cases the Special Rapporteur also transmitted to Governments allegations of a more general nature regarding torture practices, whenever these allegations were brought to his attention. In addition, 42 countries provided the Special Rapporteur with replies on some 459 cases submitted during the current year, whereas 24 did so with respect to some 363 cases submitted in previous years.

19. This chapter contains, on a country-by-country basis, summaries of the general allegations transmitted by letter to Governments and the latters' replies, as well as a numerical breakdown of the individual cases and urgent appeals transmitted by the Special Rapporteur and the replies received from Governments. Information about follow-up action to reports and recommendations made after previous years' visits to countries are also included. Finally, observations by the Special Rapporteur have also been included where applicable.

Algeria

Observations

20. At the end of the year, the Special Rapporteur received substantial information concerning the use of torture in the context of detention and enforced disappearances sometimes followed by death. Although there was neither the time nor the resources to process the information with a view to transmitting it to the Government, the Special Rapporteur felt that it justified his drawing the concerns of the Committee against Torture to the attention of the Commission. In particular, the Committee expressed concern about the resurgence since 1991 of torture, which had practically disappeared between 1989 and 1991 as well as the possibility of extending garde à vue detention up to 12 days and of ordering administrative detention without any judicial authority. Like the Committee, the Special Rapporteur is aware of the appalling level of violence in the country, including atrocities, sometimes involving torture, perpetrated by armed opposition groups. He urges the Government nevertheless to give urgent and favourable consideration to the Committee's recommendations.

Albania

21. The Special Rapporteur transmitted to the Government one urgent appeal on behalf of members of opposition political parties.

Armenia

22. By letter dated 12 June 1996 the Special Rapporteur informed the Government that he had received reports of beatings and other forms of ill-treatment inflicted for the purpose of obtaining information, "confessions" or intimidation upon a number of persons detained in Armenia. Detainees were reported frequently to be denied access to family members while their cases were being investigated. Many alleged victims of ill-treatment were said to be reluctant to make official complaints about the abuse for fear that they might suffer reprisals. The Special Rapporteur also transmitted six individual cases and information concerning a group of individuals.

Observations

23. In the light of the information he has received, the Special Rapporteur shares the concern expressed by the Committee against Torture "about the number of allegations it has received with regard to ill-treatment perpetrated by public authorities during arrest and police custody" (A/51/44, para. 95) and shares the Committee's "doubts about the effectiveness of the provisions for the safeguard of persons in police custody" (para. 94). He urges the Government to give serious consideration to the Committee's recommendations (paras. 96-101).

Austria

24. The Special Rapporteur transmitted to the Government two individual cases, to which the Government provided replies. The Government also replied to one case transmitted in 1995.

Azerbaijan

25. The Special Rapporteur transmitted to the Government one individual case.

Bahrain

26. By letter dated 6 May 1996 the Special Rapporteur advised the Government that he had continued to receive information indicating that most persons arrested for political reasons in Bahrain were held incommunicado, a condition of detention conducive to torture. The Security and Intelligence Service (SIS) and the Criminal Investigation Department (CID) were alleged frequently to conduct interrogation of such detainees under torture. The practice of torture by these agencies was said to be undertaken with impunity, with no known cases of officials having been prosecuted for acts of torture or other ill-treatment. In cases heard before the State Security Court, defendants were reportedly convicted solely on the basis of uncorroborated confessions made to political or security officials or on the testimony of such officials that confessions had been made. Although defendants often alleged that their "confessions" had been extracted under torture, impartial investigations of such claims were reportedly never ordered by the court. In addition, medical examinations of defendants were rarely ordered by the court, unless the defendant displayed obvious signs of injury. Such outward displays of injury were said to be uncommon, since torture victims were usually brought to trial well after their injuries had healed.

27. In addition to its use as a means to extract a "confession", torture was also reportedly administered to force detainees to sign statements pledging to renounce their political affiliation, to desist from future anti-government activity, to coerce the victim into reporting on the activities of others, to inflict punishment and to instil fear in political opponents. The methods of torture reported include: falaqa (beatings on the soles of the feet); severe beatings, sometimes with hose-pipes; suspension of the limbs in contorted positions accompanied by blows to the body; enforced prolonged standing; sleep deprivation; preventing victims from relieving themselves; immersion in water to the point of near drowning; burnings with cigarettes; piercing the skin with a drill; sexual assault, including the insertion of objects into the penis or anus; threats of execution or of harm to family members; and placing detainees suffering from sickle cell anaemia (said to be prevalent in the country) in air-conditioned rooms in the winter, which can lead to injury to internal organs.

28. The Special Rapporteur transmitted one individual case to the Government, to which he received a reply, and informed the Government that he had received information on other cases, but that the names of the alleged victims had been withheld or the victim had requested that the case remain confidential for fear of reprisals by the authorities against the victim or his or her family. The Special Rapporteur also made 6 urgent appeals on behalf of 19 persons. The Government replied to each of these appeals.

Observations

29. In the light of repeated allegations of torture and other ill-treatment, sometimes resulting in death, especially at the hands of the SIS, the Special Rapporteur believes the Government should establish measures to ensure the independent monitoring, on a sustained basis, of the arrest, detention and interrogation practices of law enforcement agencies, particularly the SIS.

Bangladesh

30. The Special Rapporteur transmitted 29 individual cases. He also made one urgent appeal, to which the Government provided a reply.

Observations

31. In the light of the severe injuries inflicted on some university students at an incident at Dhaka University (see E/CN.4/1997/7/Add.1, para. 17), the Special Rapporteur believes the Government should institute an independent inquiry into the handling of the incident. The continuing flow of information about abuses committed by the army in the Chittagong Hill Tracts suggests that the Government should establish effective and independent means to monitor the army's counter-insurgency methods in that area.

Bolivia

32. The Special Rapporteur received the report of the Chamber of Deputies Human Rights Commission entitled "Complaints of torture of citizens charged with armed revolt", which gives an account of the Commission's investigation of torture and other human rights violations involving persons detained

between 1989 and 1993 in the context of the anti-terrorism campaign. The report contains, inter alia, data on the cases of persons who were reportedly tortured, methods of torture and the identity of the persons responsible, and calls for the institution of criminal proceedings against them as well as for the forwarding of the report to the courts in which criminal proceedings are under way against the persons charged with armed revolt and other crimes against State security.

33. In the light of this report, the Special Rapporteur requested the Government, by a letter of 11 July 1996, to provide information on the follow-up action taken by the competent bodies on the recommendations of the Commission and the status of the proceedings against the persons accused of having perpetrated torture in cases where such proceedings have begun.

34. The Special Rapporteur also transmitted to the Government two urgent appeals on behalf, respectively, of two groups of persons.

Bulgaria

35. By letter dated 9 August 1996 the Special Rapporteur advised the Government that he had received information according to which torture and other ill-treatment against criminal suspects occurred on a widespread basis in Bulgaria. Victims were reportedly tortured or beaten to coerce the signing of "confessions" or to elicit other information in connection with criminal investigations. In a number of cases, victims of ill-treatment allegedly had not been provided adequate medical treatment. Most victims were said to desist from making official complaints for fear of further harassment or because they did not believe that such action would result in the punishment of the perpetrator.

36. The Special Rapporteur also transmitted allegations concerning 24 individual cases. The Government replied to 16 of them as well as to 2 cases transmitted in previous years.

Observations

37. The Special Rapporteur is concerned by the frequency of allegations of torture or ill-treatment, sometimes followed by death, of persons in police custody. The rarity of any disciplinary measures and of investigations leading to criminal prosecutions, as well as the virtual absence of successful prosecutions of those responsible, can only lead to a climate of impunity. He believes the Government should establish measures to ensure the independent monitoring, on a sustained basis, of the arrest, detention and interrogation practices of the relevant law enforcement agencies.

Burundi

38. The Special Rapporteur transmitted, in conjunction with the Special Rapporteur on the situation of human rights in Burundi, one urgent appeal on behalf of a group of 15 persons.

Cambodia

39. The Special Rapporteur transmitted to the Government seven individual cases.

Cameroon

40. The Special Rapporteur transmitted to the Government three urgent appeals on behalf of six persons.

Canada

41. The Special Rapporteur sent one urgent appeal to the Government on behalf of an asylum seeker about to be deported to his country of origin. The Government replied to this appeal.

Chad

42. The Special Rapporteur transmitted one urgent appeal to the Government on behalf of one person.

Chile

43. The Special Rapporteur received replies from the Government with respect to 25 cases transmitted in 1995.

44. By a note verbale dated 10 September 1996 the Government transmitted its observations on the report on his visit to Chile which the Special Rapporteur submitted to the fifty-second session of the Commission on Human Rights (E/CN.4/1996/35/Add.2).

45. The Government made the following comments regarding the obstacles to the democratic functioning of some of the highest institutions, constituted by laws inherited from the military regime, to which the Special Rapporteur drew attention in his report (paras. 4-8):

(a) The democratic Governments have maintained their forthright opposition to the Amnesty Act; they have stated that it was unlawful and regretted that they had been unable to abrogate it as they lacked the necessary parliamentary majority. The legislation in force does not preclude investigations conducted by the courts from continuing until the facts have been elucidated and the identity of those responsible determined;

(b) In August 1995 the President of the Republic submitted to the Senate a number of bills whose purposes were to do away with the institution of appointed senators, to change the composition of the Constitutional Court, to effect changes in the Security Council and to authorize the President to retire Generals without the need for a proposal by the relevant Commander-in-Chief. These bills were rejected by the Senate;

(c) As to the functioning of the Programme of Compensation and Full Health Care for Victims of Human Rights Violations (PRAIS), 13 teams are now operating throughout Chile and between 1992 and 1995 the programme catered to 4,197 family groups with members who had been tortured.

46. Regarding the alleged irregularities in the proceedings involving three cases of persons tortured and executed during the period of the military Government, to which the Special Rapporteur drew attention (para. 9), the Government provided the following information:

(a) In the case of Mario Fernández López, two members of the army received prison sentences of 6 years and 10 years and 1 day respectively; they began serving their sentences in Punta Peuco prison on 17 January 1996;

(b) In the case of Carlos Godoy Echegoyen, a former carabinero was sentenced to imprisonment for three years and one day; he began serving his sentence in Punta Peuco prison on 12 December 1995;

(c) In the case of Carmelo Soria Espinoza, on 4 June 1996 the court ordered the general dismissal of proceedings under the terms of the Amnesty Act, a decision was being appealed to the Supreme Court.

47. With regard to the Special Rapporteur's observations on the situation of minors assigned to punishment cells in the Comunidad Tiempo Joven detention centre for minors (para. 33), the Government stated that work on a special section to replace the cells in question was to be completed in September 1996.

48. As to the criticism heard by the Special Rapporteur about the fact that article 260 of the Code of Criminal Procedure provides for "arrest on suspicion", and his recommendation that it should be amended (paras. 34-38), the Government reported that in July 1996 the Chamber of Deputies' Constitutional, Legislative and Judicial Committee issued a report advocating the deletion of that provision from the present Code and its replacement by the one contained in the draft of the new Code of Criminal Procedure.

49. As for the attitude of the police authorities towards torture (paras. 39-42), the Government stated that it shares the Special Rapporteur's view that both the uniformed police (Carabineros) and the plain-clothes police department (Investigaciones) should be brought under the authority of the Minister of the Interior to permit better coordination in preventing and investigating offences. Moreover, both departments have undertaken a process of weeding out staff who have failed to observe the basic rules of law in performing their duties. On 24 January 1996 the Director-General of the Carabineros reported that he had decided to retire a total of 249 members of that body on 1 February 1996.

50. The Special Rapporteur had drawn attention to a number of shortcomings in the system of criminal justice regarding the protection of detainees against torture or ill-treatment by the police. However, the Government reported that many of these shortcomings will be remedied as a result of the reform of the Code of Criminal Procedure, which is under way. The draft

reform lists the rights of accused persons who have to be informed of them by the police. They include the right to remain silent, the right to be assisted by a lawyer during the initial phases of the investigation, the right to confer daily and in private with a lawyer during detention and the right to have their family immediately informed of their arrest. The draft institutes oral, public and adversarial proceedings and separates the investigatory functions from the judicial by establishing the Prosecution Service. The reform will also make it possible to conduct more detailed, thorough and specialized police investigations, based on the balanced use of a variety of investigative tools and precluding the possibility of basing the trial essentially on the suspect's confession. The maximum period for which suspects may be held in police custody is reduced to 12 hours, after which they are to be referred to the Prosecution Service. The police are prohibited from questioning detainees without the prior authorization of the Prosecution Service's prosecutor. Suspects may not be held incommunicado for more than five days, after which they must be allowed to communicate with their lawyer.

51. The Government also reported that, on 17 July 1996, the Chamber of Deputies' Constitutional, Legislative and Judicial Committee adopted the full text of the draft which would then be considered by the Chamber and subsequently the Senate. Meanwhile, the Organization Act and constitutional reform relating to the Prosecution Service are to be adopted. The Government hopes that Congress will have completed the reforms process before the next presidential term of office in 1998.

52. As regards the definition of torture as an offence, in respect of which current legislation is allegedly inadequate (para. 69), the Government has reported that it submitted a bill to the Chamber of Deputies in order specifically to define torture as an offence using the wording contained in the Convention against Torture. In addition, anyone who, being aware of such offences and in a position to prevent them, fails to do so, will also be liable to punishment.

53. Regarding the Special Rapporteur's recommendation that the Government should consider increasing its contribution to the United Nations Voluntary Fund for Victims of Torture, the Government has indicated its intention of increasing its contribution to US$ 10,000 as from 1997.

Observations

54. The Special Rapporteur is grateful to the Government of Chile for the very detailed response and the extensive information, indicating its continuing serious and constructive approach to cooperation with the Special Rapporteur and the Commission. He attaches particular importance to the successful prosecution in two cases of persons responsible for criminal excesses and looks forward to learning of developments before the Supreme Court in respect of a third (Carmelo Soria Espinoza). He commends the Government on its efforts to amend the Penal Code and reform the Code of Criminal Procedure. In the light of the inevitably protracted procedures involved in such a major exercise, he suggests that the Government and Congress consider acting with special expedition towards the adoption of the

bill amending the existing Code of Criminal Procedure and the Penal Code in respect of detention and introducing rules for strengthening the protection of civic rights.

China

55. By letter dated 5 July 1996 the Special Rapporteur advised the Government that he had received information indicating that torture and other ill-treatment had continued to be used on a widespread and systematic basis against both common criminal detainees and persons detained for political reasons. Criminal suspects were allegedly tortured or otherwise ill-treated during preliminary or pre-trial detention to intimidate, to coerce "confessions", or to elicit information about the detainee or other persons.

56. Persons detained during the preliminary stages of an investigation of a case were said usually to be held incommunicado, without access to family or legal counsel. Such periods of incommunicado detention might last for a number of months or even years. Under the recent amendments to the Criminal Procedure Law, lawyers were permitted to meet detainees in the presence of police officers "following the first interrogation". However, the provisions were also said to allow persons to be held without notification of the detention to family members or legal representatives if "this notification hinders the investigation of the crimes or cases".

57. Torture was also alleged to occur frequently in administrative detention, including "Shelter and Investigation" (shourong schencha), in which persons may be held for up to three months without any judicial proceedings or approval, "Re-education Through Labour" (laodong jioyang), in which persons may be sent to labour camps for up to three years without judicial proceedings or approval, and "Retention for In-Camp Employment" (liuchang jiuye), in which persons may be detained in prison camps after they have completed their sentences.

58. The forms of punishment reported to be administered in prisons and labour camps include beatings, shackling and prolonged solitary confinement. In some instances, torture was reportedly carried out for discipline or punishment by inmates, known as "trustees", acting as surrogates for or at the instigation of prison officials. Arrangements of this nature were said to allow prison officials to avoid accountability for abuse inflicted upon prisoners.

59. The Special Rapporteur also informed the Government that he had continued to receive reports according to which the practice of torture was endemic to police stations and detention centres in Tibet. At police stations, the forms of torture and ill-treatment reported include kicking; beating; application of electric shocks by means of batons or small electrical generators; the use of self-tightening handcuffs; deprivation of food; exposure to alternating extremes of hot and cold temperatures; enforced standing in difficult positions; enforced standing in cold water; prolonged shackling of detainees spread-eagled to a wall; placing of heated objects on the skin; and striking with iron rods on the joints or hands. Tibetans who had been forcibly returned to Tibet after seeking asylum in Nepal were alleged to be particularly vulnerable to torture.

60. The Special Rapporteur also transmitted allegations on 16 individual cases and 2 urgent appeals on behalf of 2 persons. The Government replied to one of the urgent appeals.

Observations

61. The information reaching the Special Rapporteur continues to justify concern at the situation. Recent legal developments could make a positive contribution, the impact of which would be a focus of a visit to the country should he receive an invitation, as requested in 1995 (see E/CN.4/1996/35, paras. 5 and 47).

Colombia

62. By letter dated 16 September 1996 the Special Rapporteur transmitted 17 cases to the Government, to which the latter replied on 26 November 1996. The Government also replied to two cases that had been transmitted in 1995.

63. On 29 October 1996 the Special Rapporteur, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent a letter to the Government reminding it of the recommendations made after their visit to the country in October 1994 (see E/CN.4/1995/111) and requesting information about a number of issues, such as the following: the reform of the military criminal justice system as well as the regional justice system, the programme for the protection of witnesses intervening in proceedings on human rights violations, the bill on compensation for victims of human rights violations, the measures to dismantle the paramilitary groups and the measures to combat the social cleansing killings.

Observations

64. The Special Rapporteur welcomes the conclusion of the agreement between the High Commissioner/Centre for Human Rights and the Government of Colombia which seems to offer the prospect of being a significant response to the need, referred to in his last report "to set up a standing international human rights mechanism ... to report publicly on the human rights situation and to monitor human rights violations in situ, as well as to assist the Government and non-governmental organizations in this field" (E/CN.4/1996/35, para. 54). Such a field presence could contribute to preventing the occurrence of torture and ill-treatment as well as the impunity which permits them to continue, in particular through the implementation of the recommendations formulated in the joint report of the Special Rapporteurs. It will be desirable for the Commission to keep the matter under review with a view to assessing the effectiveness of the new office at its fifty-fourth session.

Congo

65. The Special Rapporteur transmitted two urgent appeals on behalf of four persons.

Côte d'Ivoire

66. The Special Rapporteur transmitted nine individual cases to the Government.

Cuba

67. The Special Rapporteur transmitted nine individual cases to the Government, as well as a number of cases already transmitted in 1995 on which he had received no replies. He also sent one urgent appeal on behalf of one person. The Government replied to one urgent appeal sent in 1995 together with the Special Rapporteurs on extrajudicial, summary or arbitrary executions and on the situation of human rights in Cuba, on behalf of three persons.

Observations

68. The Special Rapporteur notes with satisfaction that he has only infrequently received allegations of physical torture or ill-treatment of persons held for interrogation. However, over the years he has continued to receive persistent allegations of brutality, often resulting in injury, to persons held in prisons where conditions are reportedly extremely harsh. In this connection, he draws attention to and associates himself with the recommendation of the Special Rapporteur on the situation of human rights in Cuba, that the Government should "ensure greater transparency and guarantees in the prison system, so as to prevent, to the extent possible, excessive violence and physical and psychological suffering from being inflicted on prisoners. In this connection, it would be a major achievement to renew the agreement with the International Committee of the Red Cross and to allow non-governmental humanitarian organizations access to prisons" (A/51/460, annex, para. 44 (k)).

Cyprus

69. The Special Rapporteur transmitted to the Government one individual case.

Ecuador

70. The Special Rapporteur transmitted to the Government five individual cases. The Government replied to two cases transmitted by the Special Rapporteur in 1995.

Egypt

71. By letter dated 22 July 1996 the Special Rapporteur advised the Government that he had received information according to which inmates at Fayyom prison had frequently been subjected to torture or ill-treatment as a means of discipline or punishment. Upon arriving at the prison, new inmates were said to undergo a "reception party", whereby they were forced to kneel down and move for 10 metres between two rows of guards who beat and kicked them as they moved. With the exception of a four-day period in April 1996, lawyers and relatives had reportedly been banned from visiting prisoners.

72. The Special Rapporteur also transmitted 11 individual cases and 1 urgent appeal on behalf of 5 persons. The Government replied to 150 cases transmitted in previous years.

Observations

73. The Special Rapporteur acknowledges the great effort undertaken by the Government to assemble information on a large number of cases, which must have involved a substantial deployment of resources. While appreciating this effort, as well as the difficulties posed by the serious incidence of politically motivated violence in the country, the Special Rapporteur is compelled to note how long investigations of allegations generally take and the rarity of such investigations concluding in prosecutions, especially where the Security Services Investigation is concerned. In this connection, he finds notable the conclusion of the Committee against Torture, after its inquiry pursuant to article 20 of the Convention against Torture "that torture is systematically practised by the security forces in Egypt, in particular by State Security Intelligence, since in spite of the denials of the Government, the allegations of torture submitted by reliable non-governmental organizations consistently indicate that reported cases of torture are seen to be habitual, widespread and deliberate in at least a considerable part of the country" (A/51/44, para. 220). He also underlines the Committee's recommendations (paras. 221-222).

El Salvador

74. The Special Rapporteur transmitted three individual cases to the Government.

Equatorial Guinea

75. By letter dated 12 July 1996 the Special Rapporteur informed the Government that he had received information according to which torture and ill-treatment were frequently inflicted on detainees, including those arrested for political reasons. The report of the Special Rapporteur on the situation of human rights in Equatorial Guinea referred extensively to this problem (E/CN.4/1996/67, paras. 27-31). By the same letter the Special Rapporteur transmitted to the Government 13 individual cases. He also sent to the Government two urgent appeals on behalf of two persons.

Observations

76. The Special Rapporteur is concerned by the allegations he has received which are consistent with information in the hands of the Special Rapporteur on the situation of human rights in Equatorial Guinea and he endorses the latter's recommendations (paras. 78 and 79 of E/CN.4/1996/67).

Ethiopia

77. The Special Rapporteur transmitted to the Government 4 urgent appeals on behalf of 18 persons. The Government replied to one of the appeals concerning one person.

France

78. The Special Rapporteur transmitted to the Government allegations about one particular incident involving several persons, as well as one individual case. The Government sent replies on eight cases transmitted in 1995.

Germany

79. By letter dated 6 May 1996 the Special Rapporteur advised the Government that he had received information according to which a number of persons belonging to ethnic or national minorities residing in Germany had been subjected to severe beatings and other ill-treatment by police officers. A substantial number of such incidents were said to have occurred in Berlin.

80. The Special Rapporteur also transmitted seven individual cases, to which the Government provided replies.

Greece

81. The Special Rapporteur transmitted allegations concerning five individual cases, to which the Government provided replies.

Guatemala

82. The Special Rapporteur transmitted six individual cases, to which the Government replied. He also sent, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, one urgent appeal on behalf of one person, to which the Government also replied.

Observations

83. The information continuing to reach the Special Rapporteur leads him to draw attention to the findings of the Human Rights Committee and the Committee against Torture. The Human Rights Committee noted "with alarm the information received of cases of ... torture, rape and other inhuman or degrading treatment or punishment ... by members of the army and security forces, or paramilitary and other armed groups or individuals (notably the Civil Defence Patrols (PACs) and former military commissioners)" (A/51/40, para. 232). The Committee was also concerned "that the absence of a State policy for combating impunity has prevented the identification, trial and punishment ... of those responsible, and the payment of compensation to the victims" (para. 229). The Committee against Torture expressed similar concerns (A/51/44, paras. 53-56).

Guinea

84. The Special Rapporteur sent one urgent appeal on behalf of three persons, to which the Government replied.

Honduras

85. On different dates the Special Rapporteur transmitted allegations concerning 12 cases involving minors. The Government replied to 10 of them.

Hungary

86. The Special Rapporteur transmitted allegations concerning four individual cases, to which the Government provided replies. He also transmitted an urgent appeal on behalf of four persons.

India

87. By letter dated 16 September 1996 the Special Rapporteur advised the Government that he had continued to receive information indicating that the security forces in Jammu and Kashmir had tortured detainees systematically in order to coerce them to confess to militant activity, to reveal information about suspected militants, or to inflict punishment for suspected support or sympathy with militants. The use of torture was said to be facilitated by the practice of holding detainees in temporary detention centres without access to courts, relatives or medical care. The methods of torture reported include severe beatings, electric shocks, crushing the leg muscles with a wooden roller, burning with heated objects and rape.

88. The practice of incommunicado detention was said to facilitate torture. The security forces were reported rarely to produce detainees before a magistrate, despite their being required by law to do so within 24 hours of detention. It was reported that since 1990 over 15,000 habeas corpus petitions had been filed to reveal the whereabouts of detainees and the charges against them, but that in the vast majority of these cases the authorities had not responded to the petitions. It was further reported that on no occasion had information been made public regarding instances of action taken against security force personnel in Jammu and Kashmir for acts of torture.

89. The Special Rapporteur transmitted six individual cases and received replies to three of these cases. He also transmitted follow-up information on 19 previously transmitted cases. The Special Rapporteur sent 2 urgent appeals, 1 on behalf of 2 individuals and another on behalf of some 180 Bhutanese refugees staging a march through India. The Government replied to those appeals. The Government also replied to six cases transmitted in previous years.

Observations

90. The Special Rapporteur is grateful for the responses of the Government and the efforts involved in collecting such information in a large federal State. Nevertheless, he continues to be concerned at the persistence of allegations of torture, followed often by death in custody, and to regret the reluctance of the Government to invite him to visit the country.

Indonesia

91. By letter dated 11 July 1996 the Special Rapporteur advised the Government that he had continued to receive reports indicating that torture or other ill-treatment of both criminal suspects and persons detained for political reasons was occurring on a widespread basis in Indonesia. Persons said to be particularly vulnerable to such abuse were those arrested within the context of counter-insurgency operations in Irian Jaya and East Timor, workers engaging in strikes or unauthorized union activities, student demonstrators and journalists.

92. The use of torture was reportedly facilitated by the following factors: the near-impunity enjoyed by members of the security forces; the frequent practice of unacknowledged and/or arbitrary detention; the denial to detainees of access to legal counsel; and restrictions on such access by human rights monitors. The methods of torture reported include beatings all over the body with fists, pieces of wood, iron bars, cables, bottles or rocks; burning with cigarettes; electric shocks; rape and other sexual abuse; suspension upside-down by the ankles; sleep and food deprivation; and death threats.

93. The National Commission on Human Rights (Komnas HAM) was said to lack full independence and effectiveness, as evidenced by its apparent failure to consider, in its investigation of the riots in East Timor of September and October 1995, a number of human rights violations, including torture, allegedly committed by members of the security forces. In addition, being under no formal obligation to act on the Commission's findings, the Government had reportedly ignored them partially or wholly.

94. By letter dated 20 October 1996 the Government stated that by presenting sweeping allegations, without any substance whatsoever, that torture was widespread in Indonesia, the Special Rapporteur was engaging in a questionable method of work. Allegations of this nature should not be processed by the Special Rapporteur. The Government stressed that it had neither the time nor the inclination to explain that the Indonesian National Commission on Human Rights had all the power and resources to be operational and independent. To explain this matter, on behalf of the Commission, would be an irresponsible attempt to tamper with its work. The Government also provided quotations from an Indonesian human rights lawyer, a former Chairman of the Indonesian Legal Aid Foundation, the United States Secretary of State and a United States Under-Secretary of State, all commenting favourably upon the work of the Human Rights Commission.

Information transmitted to the Government in connection with the Special Rapporteur's visit to Portugal

95. By letter dated 19 September 1996 the Special Rapporteur informed the Indonesian Government that the Government of Portugal had invited him to visit Lisbon in order to meet a number of East Timorese persons residing in Portugal who had allegedly been tortured by Indonesian security forces prior to leaving their country. Partly due to the fact that the Government of Indonesia had replied negatively (at least until spring 1997) to the Special Rapporteur's request for a visit to Indonesia and East Timor, he decided to accept the invitation. The Special Rapporteur considered that that opportunity to obtain

first-hand information would help him to assess the situation regarding the use of torture against East Timorese and to better evaluate the information he regularly received from other sources, in particular non-governmental organizations. Accordingly, the Special Rapporteur visited Lisbon on 5 and 6 September 1996, during which he received the testimony of alleged victims as well as information from non-governmental organizations.

96. By the same letter, the Special Rapporteur provided the Government with a summary of allegations he had received during his visit. According to non-governmental sources, the use of torture against suspected supporters of the East Timorese resistance movement was widespread, despite the fact that it was prohibited under the Indonesian Criminal Code, the Code of Criminal Procedure and various ministerial regulations. Torture was allegedly carried out by the military, most frequently by members of the SGI (Special Intelligence Unit) forces, as well as the police, especially in East Timor, but also in Jakarta or other cities in Indonesia where the activists might be arrested. Few of the persons arrested were reportedly brought before a judge or prosecuted and, in any event, judges did not normally take into consideration allegations of torture made by those being prosecuted, who themselves were frequently not assisted by defence lawyers. It was also reported that torture usually occurred during the first hours or days following the arrest, during which time the detainees were deprived of contact with their families and interrogated about their links with the resistance movement. Arrests frequently took place in the context of demonstrations or other acts of protest, even if they were peaceful. The most common methods of torture reported include severe beatings with fists, lengths of wood and iron bars, kicking, burning with cigarettes and electric shocks. Although the majority of torture victims seemed to be males, reports were also received documenting sexual abuse, including rape, of women under detention or in other circumstances, such as when house-to-house searches were conducted.

97. The Special Rapporteur also heard 10 oral accounts of torture from the alleged victims, summaries of which were also transmitted to the Indonesian Government on 13 September 1996. In a reply dated 1 November 1996, the Government informed the Special Rapporteur that seven of the persons from whom the Special Rapporteur had received information had never in fact been detained nor had they been involved in law-breaking situations. The police and other law-enforcement officials had no criminal record of them whatsoever. With respect to the remaining three alleged victims, a summary of the Government's reply follows that of the corresponding case in the paragraphs below.

98. Martinho Ximenes Belo, a student, was first arrested at the age of 12 in 1981 in Vatulari. He and his father were interrogated about his brother's links with the resistance movement at military headquarters (KORAMIL), during which he received a cigarette burn to his forearm and he and his father were beaten in front of each other. They were detained at KORAMIL for about three months, and then imprisoned together with five other members of their family, in Atauro island. He was released in 1986. In 1992 he was arrested again in Viqueque by military personnel but was not ill-treated during interrogation.

99. Moisés de Amaral was first arrested on 31 March 1982 in Vatularialong, along with 35 other persons, by KORAMIL personnel. All of the detainees were

beaten heavily with wooden sticks during interrogation. He was later transferred to the Atauro island prison, where he remained until January 1987, without having seen a judge. On 27 November 1991, after he was arrested again in Viqueque, he was interrogated and beaten with belts, kicked and punched at KODIM headquarters. He remained at KODIM for about three months, during which time he was not allowed to receive visits, including from the ICRC.

100. Egas Dias Quintas Monteiro, a student, was arrested for the first time in August 1991 in Bandung, West Java, by military personnel, who blindfolded him and brought him to a military barracks in Sumera. There he was beaten with a rubber stick, kicked and given electric shocks to his sexual organs and ears. He also had a nail hammered in each foot, was burnt with cigarettes and had all his toenails extracted. During the torture he was interrogated about his participation in demonstrations and about declarations he had made to the press criticizing the Indonesian study programme for young East Timorese in Java. He was later taken to a military hospital, from which he escaped. He was subsequently arrested in November 1991 and November 1994 in Jakarta, but he was not ill-treated on those occasions.

101. Alfredo Rodríguez was first arrested in October 1987, while carrying arms for the guerrilla in the mountains. He was wounded in the incident and hospitalized in Dili. One month later he was taken to premises of the military intelligence unit (SGI) where, under interrogation, he was beaten, burned with cigarettes, and two of his toenails were removed. The interrogators also placed his feet under the legs of a chair and sat on it. He was again arrested on 9 June 1993 in Los Palos by military personnel. At the local barracks he was deprived of his clothes, handcuffed, punched, kicked and beaten with wooden sticks, burned with cigarettes repeatedly and his legs were scraped with a sharp object that caused deep wounds. During the torture he was interrogated about his involvement with the resistance movement and was subsequently placed in a cell for six days with his hands and feet tied. He was released on 17 July 1993 after being warned not to tell anybody that he had been tortured.

102. Valdemar Pereira da Silva, a student, was arrested on 17 January 1990 in Lecidere, Dili, by the SGI, during a peaceful pro-independence demonstration. At SGI headquarters in Colmera, he was interrogated about his links with the resistance movement and beaten until he fainted. The interrogators also put the legs of a chair on his feet and sat on it. He was released a few days later and arrested again on 12 November 1991 in the context of the Santa Cruz incidents. He was interrogated on over 10 occasions during four months' detention and was severely beaten during three of the session. Following a demonstration in Colmera on 5 September 1994 he was detained for a third time. At SGI headquarters he was interrogated for about two hours, during which he was severely beaten and given electric shocks to his feet and arm.

103. Ilidio de Oliveira Câmara was arrested together with six friends on 26 December 1995, near the Canadian Embassy in Jakarta. At KODIM headquarters they were interrogated separately and severely beaten. Ilidio de Oliveira Câmara was also burned with cigarettes in his arms. He was transferred to a police station and further interrogated and beaten. He stayed at the police station for two months, during which he was not allowed to contact his family.

He was subsequently taken to a rehabilitation centre (Rutan), where he was beaten again upon arrival and subjected to degrading treatment, such as forcing him to put his leg into the toilet.

104. Antonio Campos was first arrested on 12 February 1987 in Los Palos, East Timor. At SGI headquarters in Jakarta he was interrogated about his involvement in the resistance movement, subjected to beatings, and one of his toenails was removed. In addition, the legs of a table were placed on his feet while one of the interrogators jumped on it. After three months in Jakarta, he was taken back to the Dili SGI headquarters and released 10 days later. On 9 July 1993 he was arrested again in Los Palos. On each of the following five days he was interrogated, beaten and given electric shocks to his toes and fingers. He spent nine days in a dark cell before being released. During the night of 16 April 1996 he was arrested for a third time while trying to enter the Embassy of Germany in Jakarta together with seven other East Timorese. Fifteen minutes after they had jumped over the Embassy's wall, military personnel arrived and beat them severely using iron bars, as a result of which Antonio Campos had one foot fractured.

105. Victor dos Reis Carvalho, a student, was arrested in Dili on 27 January 1994, after having set fire to an Indonesian flag. At SGI headquarters, he was interrogated and beaten until he fainted and his forearm was deeply pierced with a pin for about 10 minutes. A judge in Ermera subsequently sentenced him to one year's imprisonment. When he mentioned that he had been tortured, the judge stated that, since the torture had been done by the military, it was not his concern. No defence lawyer assisted him during the trial. The day he arrived at Becora prison, he was beaten by the guards and forced to do physical exercises for some two hours. In the following days he was beaten several times. The Government replied that Victor dos Reis Carvalho's prison term was completed on 2 February 1995. During his interrogation and imprisonment he was never tortured.

106. Domingos Savio Correia, a student, was arrest[illegible] in Viqueque by members of the SGI on 22 November 1995 while trying to leave the country by boat with 28 other persons. At the military post near the harbour, he was interrogated and beaten. After being transferred to Dili police headquarters (POLWIL) they were again interrogated and beaten. Domingos Savio Correia was interrogated for about three hours and severely beaten on the head and chest. He and three other detainees also had a chair placed on their feet in the manner described above. After being held at POLWIL for five months he was released. The Government replied to these allegations that Domingos Sanzo Correia had been arrested on 14 November 1995 for stealing a boat and was released on 22 November 1995. Neither he nor his friends had been tortured. The leader of the boat people told the High Commissioner for Human Rights during his visit to Indonesia in December 1995 that they had not been mistreated by the police and that she wanted to leave East Timor to make a better life for her and her daughter.

107. Florindo dos Santos, a student, was first arrested on 9 July 1993 in Los Palos by SGI personnel. At SGI headquarters in Los Palos, he was slapped while being interrogated, but did not suffer any further ill-treatment. However, four other persons arrested at the same time and considered to be local leaders of the resistance movement, Aurelio Gandara, Gil da Cruz,

Estakio José Fernandes and Kamilio Alegria, were allegedly beaten, hung from their arms, burned with cigarettes and immersed in a water tank with blocks of ice roped to their bodies. One month later he was released. On 3 February 1996 he was arrested again in Dili. At the police station he was interrogated about his participation in a demonstration, punched, beaten with a wooden stick, kicked on his forehead and burned with cigarettes. After his release, Florindo dos Santos fled to Jakarta where, on 16 April 1996, he entered the Embassy of Germany as described in the case of Antonio Campos referred to above. In that incident he also was heavily beaten with wooden and iron sticks until he fainted. At the KODIM barracks and the police station he suffered no further ill-treatment and on 20 April he was released. The Government informed the Special Rapporteur that Florindo dos Santos had been arrested on 11 July 1993 on charges of involvement as a liaison for armed separatists. He was released on 18 July 1996 and had not been arrested since that time.

108. By letters dated 20 October 1996 and 1 November 1996 the Government informed the Special Rapporteur that it considered that the decision by the Government of Portugal to invite the Special Rapporteur to the country had been triggered by Portugal's hostile attitude towards Indonesia and had not been based on a sincere desire to promote and protect human rights. It was merely a part of a concerted and systematic effort to besmirch and discredit Indonesia. This hostility against Indonesia was shared by those East Timorese who had forced their way into embassies in Jakarta in the months before or during the sessions of the United Nations General Assembly, the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The timing of actions provided clues as to the real motive of their deeds. Indonesia did not intend to bar them from leaving the country, but they had no well-founded fear of persecution. In addition, those East Timorese youths who had previously fled to Portugal had been students in scholarship programmes in various provinces who had failed to graduate. As they were faced with shame, an urgent need for resources and an uncertain future, they had opted for the popular shortcut of fleeing to Portugal with a fake claim of persecution. The reason that Portugal, as opposed to other foreign embassies, had provided them with refugee status was because only Portugal would benefit politically from such a situation.

109. The Government also expressed concern that the Special Rapporteur had used the term "oral testimonies" to refer to the above-described allegations, as it was not clear whether the statements of the persons interviewed had been made under oath. Even if the statements had been made under oath, taking such evidence would be beyond the mandate of the Special Rapporteur, as his post had never been charged to act as a court of law. Furthermore, using the term "oral testimonies" could lead one to equate the work of the Special Rapporteur with that of common NGOs, which most if not all of the time had claimed to secure testimonies which had later turned out to be mere allegations. Moreover, the allegations could not be true, because the ICRC had had unlimited access to places of detention in East Timor since 1979.

110. To sum up, the Special Rapporteur transmitted to the Government information on 26 individual cases, including the 10 mentioned above. The Government replied to 23 of these cases and to 27 cases which had been transmitted by the Special Rapporteur in 1994 and 1995. The Special

Rapporteur also made 9 urgent appeals on behalf of 27 individuals and four situations involving an undetermined number of individuals. One of the urgent appeals was joined by the Special Rapporteur on freedom of opinion and expression and the Special Rapporteur on extrajudicial, summary, or arbitrary executions. Another appeal was joined by the Chairman of the Working Group on Arbitrary Detention.

Observations

111. The Special Rapporteur appreciates the Government's responses in respect of the cases he transmits to it. Despite these responses, he believes that the persistence and consistency of the allegations he receives, justify continuing concern with the issue. In particular, he does not consider simple denials by law enforcement or security agencies of detention or ill-treatment during detention as conclusive. With regard to his meetings with alleged victims of torture or ill-treatment in East Timor, he found several of their stories (which he subjected to close examination) credible, partly because of the limited nature of the allegations: ill-treatment did not occur on every occasion of detention of the person in question, nor did the ill-treatment necessarily last for the duration of the detention. The Special Rapporteur continues to regret that an invitation to visit Indonesia and East Timor has not been forthcoming.

Iran (Islamic Republic of)

112. The Special Rapporteur transmitted 20 individual cases to the Government and 4 urgent appeals on behalf of 24 persons. One of the urgent appeals was made in conjunction with the Special Representative on the situation of human rights in the Islamic Republic of Iran, concerning the alleged resumption of amputation as a punishment for criminal offences.

Observations

113. The Special Rapporteur considers that the allegations of torture should be thoroughly investigated and measures should be put in place to ensure effective monitoring of detention and interrogation practices of the relevant agencies. Prolonged incommunicado detention should not be possible. Amputation, flagellation and other forms of corporal punishment should be ended.

Iraq

Observations

114. In the light of information he has received over the years, the Special Rapporteur feels obliged to draw attention to paragraphs 9-15 of the report of the Special Rapporteur on the situation of human rights in Iraq to the General Assembly (A/51/496, annex), which cites "cruel torture and gross mistreatment upon arrest" (para. 9). He shares that Special Rapporteur's concern at continuing resort to measures of amputation and mutilation (paras. 12-15 and 108).

Israel

115. By letter dated 11 November 1996, the Government replied to information the Special Rapporteur had transmitted on 14 July 1995 concerning the practice of torture in the country (see E/CN.4/1996/35/Add.1, paras. 384-386). The Government stated that Israel's law forbade all forms of torture or maltreatment and conformed to the basic provisions of the Convention against Torture, to which it is a party. Every allegation of maltreatment was thoroughly investigated by the Department for Investigation of the Police at the Ministry of Justice, which is under the direct supervision of the State Attorney. Disciplinary or criminal measures were instigated against those responsible. In addition, any person could petition directly the Supreme Court of Israel sitting as a High Court of Justice, and the petition would be heard within 48 hours of submission.

116. Regarding access to judges, while it was true that persons suspected of State security offences could be held for up to 15 days without notification of arrest, this seldom-used procedure could be brought into effect only at the discretion of the judge when the Minister of Defence affirmed that the security of the State required temporary secrecy. While persons in the Administered Territories could be held for up to 11 days in serious cases, arrested persons could file a petition for cancellation of the arrest order and release from detention and the military courts would hear their petitions within a few days. Habeas corpus petitions could also be submitted to the Supreme Court. Israel had no policy or system of incommunicado detention, but sometimes a delay in seeing family and lawyers could occur as a result of security measures that must be taken. In any event a person must be allowed to meet with a lawyer by the fifteenth day and this requirement would be shortened to 10 days under a new Criminal Procedure Law that would enter into force in May 1997. In extreme cases, the President of the District Court could deny access to lawyers for up to 21 days. Any denial of access could be appealed to both the District Court and the Supreme Court.

117. The Government asserted that personal and political motives might be behind the fabricated or exaggerated allegations of torture made by individuals who had been arrested. The motive of making these allegations would be to embarrass the Government of Israel by spreading anti-Israel disinformation in the form of bogus human rights complaints or to justify their own actions vis-à-vis their fellow Arabs.

118. The Special Rapporteur transmitted to the Government information on 12 individual cases. He also made 7 urgent appeals on behalf of 24 persons. The Government provided replies to two of the appeals, one of which is summarized in the following paragraph. The Government also replied to seven cases that had been transmitted in 1995.

119. The Government replied to the urgent appeal transmitted by the Special Rapporteur on 15 November 1996 on behalf of Mohammad Abdel Aziz Hamdan, whose appeal to the Supreme Court that "physical pressure" not be used against him during his custodial interrogation was rejected, by transmitting a copy of the 14 November 1996 Supreme Court decision on the case. The Government also provided a background paper prepared by the Ministry of Justice on "Israel's Interrogation Practices and Policies". In the paper, the Government affirms

that Israeli law strictly prohibits all forms of torture or maltreatment. To prevent terrorism effectively while ensuring that basic human rights are protected, the authorities had adopted strict rules for handling interrogations to obtain crucial information on terrorist activities or organizations, while ensuring that suspects were not maltreated. The Landau Commission, in examining the issue in 1987, had determined that in dealing with terrorists representing a great threat to the State of Israel and its citizens, the use of a moderate degree of pressure, including physical pressure, to obtain information, such as that which would prevent imminent murder or would provide vital information on a terrorist organization, was unavoidable. The use of moderate pressure was permissible under international law, as evidenced by the European Court of Human Rights ruling that ill-treatment would have to "reach a certain severe level in order to be included in the ban" of torture and cruel, inhuman or degrading punishment contained in the European Convention on Human Rights.

120. The Landau Commission had constrained the boundaries of permissible physical pressure to forbid disproportionate pressure or that which reached the level of physical torture or maltreatment or grievous harm to the detainee's honour which would deprive him of his human dignity, as follows. The use of less serious measures must be weighed against the degree of anticipated danger; physical and psychological means of pressure permitted for use by an interrogator must be defined and limited in advance through binding directives, the implementation of which must be strictly supervised; and those supervising the interrogators must see to it that disciplinary and, in serious cases, criminal proceedings are brought against interrogators deviating from what is permissible. The exact forms of pressure permissible to the interrogators had been kept secret so as not to limit their effectiveness. Safeguards had been put in place, including the mandatory investigation of claims of mistreatment and external supervision of the interrogation process by the State comptrollers and a special sub-committee of the Israeli Parliament (Knesset). The ICRC was able to meet with detainees in private within 14 days of arrest. A special ministerial committee also undertook periodic reviews of the guidelines. Pursuant to such a review, new guidelines issued in 1993 established that the need and justification for physical pressure must be established in every individual case.

Observations

121. The following forms of pressure during interrogation appear so consistently (and have not been denied in judicial proceedings) that the Special Rapporteur assumes them to be sanctioned under the approved but secret interrogation practices: sitting in a very low chair or standing arced against a wall (possibly in alternation with each other); hands and/or legs tightly manacled; subjection to loud noise; sleep deprivation; hooding; being kept in cold air; violent shaking (an "exceptional" measure, used against 8,000 persons according to the late Prime Minister Rabin in 1995). Each of these measures on its own may not provoke severe pain or suffering. Together - and they are frequently used in combination - they may be expected to induce precisely such pain or suffering, especially if applied on a protracted basis of, say, several hours. In fact, they are sometimes apparently applied for days or even weeks on end. Under those circumstances, they can only be described as torture, which is not surprising given their

advanced purpose, namely, to elicit information, implicitly by breaking the will of the detainees to resist yielding up the desired information. The Special Rapporteur concurs with the view of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, reaffirming the position of the Committee against Torture, that "an immediate end should be put to current interrogation practices and all victims of such practices should be granted access to appropriate rehabilitation and compensation measures" and that "interrogation procedures be published in full so that they are both transparent and seen to be consistent with the standards of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (E/CN.4/1996/18, para. 36). The Special Rapporteur appreciates the responses of the Government and is aware of the grave challenges posed by politically motivated terrorist activities, but, as the Government itself acknowledges, these cannot justify torture or cruel, inhuman or degrading treatment.

Italy

122. On 10 October 1996 the Special Rapporteur informed the Government that he had received information to the effect that persons suspected of having committed offences under the ordinary law or during identity checks were sometimes ill-treated by police officers when they were arrested. In most cases this ill-treatment occurred in the street, during the arrest and the first 24 hours of detention, and therefore before the person arrested had seen a lawyer or had been brought before a judge. Cases were also mentioned of police officers having brutalized persons who tried to intervene when they were ill-treating third persons.

123. Physical violence appeared to be used as a means of punishing or humiliating an individual, and certain forms of prejudice, particularly racial prejudice, seemed to be a factor in this connection. Furthermore, physical ill-treatment was allegedly accompanied in many cases by insults, particularly racial insults when the persons concerned were immigrants or Gypsies. It was said that the most common forms of ill-treatment were repeated slapping, kicking, punching and beating with a truncheon.

124. The Special Rapporteur transmitted 10 individual cases, to which the Government replied. At the Special Rapporteur's request, the Government also provided follow-up information on a number of cases transmitted in previous years.

Jamaica

125. By letter dated 18 December 1995 the Government replied to the letter the Special Rapporteur had sent on 10 July 1995 regarding the conditions under which children were held in police lock-ups in the country (see E/CN.4/1996/35/Add.1, paras. 411-412). The Government stated that under the provisions of the Juveniles Act, youngsters under the age of 17 may not be detained in the same cells as adults. In practice, juveniles were sometimes held in the same building as adults, but they were not held with adults in the same cells, as alleged. Each police station was staffed with persons skilled to handle juvenile matters and there existed an educational programme aimed to inform the public of this fact and of the referral system between social

agencies. The Government planned in the medium to long term to upgrade facilities for teenage girls. It was also taking steps to expedite hearings and provide better learning facilities for those in the care of the State. In addition, visiting committees, comprising Justices of the Peace, served to bring to the attention of the relevant authorities any weaknesses in the system, with an emphasis on human rights. The Government was acutely aware of the importance of protecting persons in lock-ups and correctional institutions from abuse. Personnel were constantly reminded that juveniles and young persons must be treated strictly in accordance with existing legislation and appropriate action was taken when violence occurred.

Jordan

126. The Special Rapporteur transmitted one individual case to which the Government provided a reply.

Kazakstan

127. The Special Rapporteur transmitted one individual case and made one urgent appeal on behalf of one person.

Kenya

128. By letter dated 24 January 1996 the Special Rapporteur informed the Government that he had continued to receive reports indicating that the use of torture and ill-treatment by officers of the Directorate of Security Intelligence (DSI or "Special Branch") and the Criminal Intelligence Department (CID) was widespread. The regular police, local administrative police and the KANU Youth Wingers (the youth division of the ruling party, the Kenyan African National Union) are also alleged to carry out torture. Torture and ill-treatment were reportedly inflicted to intimidate detainees, to dissuade them from engaging in political activities, to obtain "confessions" or other information, and to extract bribes.

129. Although detainees accused of offences for which the death penalty is not applicable are legally permitted to be held incommunicado for no more than 24 hours, in practice such detainees were reportedly often held incommunicado well beyond this period. (Persons accused of offences carrying the death penalty may be held incommunicado legally for up to 14 days.) It was reported that in order to maintain a state of incommunicado detention, officers often move detainees from one station to another upon arrest. It is during periods of incommunicado detention that most torture and ill-treatment occurs.

130. The methods of torture reported to be the most common include beatings with sticks, fists, rungus (knobbed sticks), handles of hoes and guns on various parts of the body, especially the soles of the feet; beatings to the soles of the feet while being suspended upside down on a stick passed behind the knees and in front of the elbows; and infliction of simultaneous blows to both ears, sometimes resulting in ruptured ear drums. Other forms of torture reported were the removal of toenails and fingernails; near-asphyxiation caused by the immersion of the head in dirty water; being held in a cell filled with two inches of water for several days (the "swimming pool"); beatings administered while the victim is suspended from a tree in the forest

at night; rape or the insertion of objects into the vagina; and pricking the penis with large pins or tying the penis with a string and pulling.

131. The vast majority of officials engaging in torture or ill-treatment were said to act with impunity. The courts reportedly rarely investigated complaints of torture, examined medical evidence, questioned the lack of medical treatment from a prisoner who alleges that he or she was tortured, or declared evidence or confessions of guilt inadmissible when extracted by torture. The courts were also said seldom to enforce the legal limits on the duration of detention periods. Lawyers defending prisoners alleged to have been tortured had reportedly faced threats to their employment and received excessively high income tax bills to dissuade them from taking up such cases.

132. The denial of medical care to prisoners was alleged to be prevalent. Private doctors are reportedly frequently denied access to prisoners or must pass through such hurdles as obtaining a court order in order to gain such access. Doctors who were able to examine prisoners allegedly faced intimidation from warders. Detainees and prisoners were often refused access to hospitals and, even when taken, were sometimes removed from hospital before treatment had commenced or been completed.

133. In a reply dated 18 March 1996 the Government stressed that torture as a means of intimidation or extracting confessions from prisoners or witnesses was prohibited and confessions obtained as a result of torture or intimidation were inadmissible in a court of law. Indeed, there had been instances when the courts had rejected such evidence. In cases where police officers had overstepped their bounds, they had been called upon to face the law and if it were established that they had committed an offence, the officers were punished. Law enforcement officers were instructed to follow both Kenyan national law and the United Nations Code of Conduct for Law Enforcement Officials. Those officers who exceed lawful force are subjected to criminal prosecution and/or disciplinary measures. In recent times, the Attorney General has acted in about 25 cases, sanctioning 48 law enforcement officers on various charges, such as murder and manslaughter, torture, and/or had directed public inquests to be held.

134. It was untrue that courts consistently failed to investigate complaints of torture. There had been many instances when officials were summoned to court to produce suspects held in police custody. Such orders had always been complied with. The Commissioners of Police and Prisons had on several occasions been ordered by courts to take suspects to hospital or to allow private doctors to visit those being detained. While it was true that fees for courts and lawyers were higher than the average Kenyan might be able to afford, this problem was economic in nature and could best be solved by development projects geared to raising the standards of living of the entire citizenry.

135. There had never been a deliberate attempt by the Government to deny prisoners medical facilities. The Prisons Act required prison officers to take ill prisoners to hospital and the Ministry of Health managed prison health facilities with the available resources. Private doctors were also allowed to treat prisoners within the procedures stipulated in the Prison Rules. However, poor health facilities were a national problem stemming from

lack of resources and not a problem of detainees only. The Prison Department and the Ministry of Health were only able to meet the health needs of detainees from limited resources.

136. Kenyan prisons were 30 per cent overcrowded, but efforts were being made to decongest the prisons. On 20 October 1995 (Moi Day), the president released some 10,000 petty offenders serving custodial sentences. In December, the Government organized a symposium for law enforcement and judicial officers on extramural punishment, with a view to having more extramural sentences adopted to alleviate crowding in the prisons. On 20 February 1996 the Attorney General appointed an Interim Committee in Community Service to implement the symposium's recommendations and produce legislation to that effect. The Government had also expanded the capacity of old prisons, such as Nairobi Remand Prison, and had built new prisons in Busia and Siaya districts. It had also acquired more blankets, mattresses and clothing for prisoners.

137. The Special Rapporteur transmitted 24 individual cases and the Government replied to 14 of these cases. The Government also replied to two cases which had been transmitted in 1995.

Observations

138. The Special Rapporteur is grateful for the responses of the Government on a number of the cases he transmitted. He, nevertheless, believes that the nature and extent of the information he receives suggests the continuing desirability that he be extended an invitation to visit the country.

Libyan Arab Jamahiriya

139. The Special Rapporteur made one urgent appeal on behalf of eight persons.

Mexico

140. The Special Rapporteur informed the Government that he had received reports according to which the courts continue to base their action on well-established case-law in accepting confessions, in many cases extracted under torture, as primary evidence in pronouncing convictions, although this is at variance with, inter alia, the Federal Act for the Prevention and Punishment of Torture. The remedy of amparo, which enables individuals to challenge acts by the authorities which violate rights established in the Constitution, is apparently ineffective in situations of this kind since, in accordance with existing case law, the first confession can still be used to convict a person even if it can be proved that it was obtained through the use of force. In addition, there is reportedly a tendency on the part of judges to disregard medical certificates furnished by defendants as proof of having been tortured. It was also reported that, pursuant to the above-mentioned Act, no convictions have yet been pronounced, even though the Act has been in force for several years.

141. The Special Rapporteur transmitted 13 newly reported cases to which the Government replied. He also retransmitted four cases from previous years,

requesting the Government to provide further details about investigations carried out. In addition, the Government transmitted information on 10 cases, some of them collective, transmitted by the Special Rapporteur in 1995. Finally, the Special Rapporteur sent 4 urgent appeals on behalf of 22 persons to which the Government also replied.

Observations

142. As the Government had announced to the Commission at its fifty-second session, it invited the Special Rapporteur to visit the country, offering a date in December that was not reconcilable with the Special Rapporteur's existing commitments. However, at the time of writing, it is hoped that the visit will be able to take place early in 1997.

Morocco

143. The Special Rapporteur transmitted to the Government one newly reported case. He also retransmitted eight cases regarding which he had received comments from the sources which were in contradiction with the Government's reply. The Government, however, reiterated its previous response.

Myanmar

144. By letter dated 11 June 1996 the Special Rapporteur advised the Government that he had received information according to which a number of persons detained for political reasons at Insein prison in Yangon had been held in exceedingly small "dog cells", intended for the keeping of military dogs. Some persons detained for political reasons at Insein had also allegedly been subjected to torture under interrogation by Military Intelligence (MI) officers, even after they had been sentenced. The interrogation was said to take place usually with the prisoner in leg irons and to be accompanied by severe beatings. Other forms of ill-treatment reported include being kept in the hot sun for prolonged periods and being forced to crawl on the ground over sharp stones.

145. The Special Rapporteur also continued to receive information indicating that members of ethnic minorities had been forced against their will to perform portering duties for the army (tatmadaw). Many such persons were reportedly subjected to torture or other ill-treatment while serving as porters. In this connection, it was alleged that porters were given inadequate food and medical care and were beaten when seen not to be working with sufficient rapidity. The situation was reported to be particularly grave with respect to ethnic Karens forced to porter during army operations against the Karen National Union (KNU).

146. The Special Rapporteur also received numerous allegations regarding Karenni villagers subjected to torture, including beatings, rape and other ill-treatment during army operations against the Karen National Liberation Army (KNLA). Some of the alleged abuses were said to have been carried out by the Democratic Kayin Buddhist Army, which is reported to receive logistical, tactical and other support from the tatmadaw. However, the alleged victims had requested that their names be withheld for fear of reprisals against them.

147. The Special Rapporteur transmitted seven individual cases and reminded the Government of the cases sent in 1995 regarding which no reply had been received. He also sent six urgent appeals, five of which were joined by the Special Rapporteur on the situation of human rights in Myanmar, on behalf of 31 persons. The Government replied to four of the appeals concerning 24 persons. The Government also replied to two urgent appeals concerning four persons that had been transmitted in 1995.

Observations

148. The information available to the Special Rapporteur leads him to share the conclusion of the Special Rapporteur on the situation of human rights in Myanmar that "the practice of torture, portering and forced labour continue to occur in Myanmar" (A/51/466, annex, para. 149). He draws particular attention to that Special Rapporteur's recommendations (2), (3), (8), (9), (15), (16) and (17).

Nepal

149. By letter dated 24 September 1996 the Special Rapporteur advised the Government that he had received information according to which persons arrested in the course of police operations against Maoist political activists in the Rapti region of mid-western Nepal had been subjected to torture or other ill-treatment by police. Such arrests were said to have been made on a widespread basis following an attack on the Halori police station in Rolpa district, reportedly by members of the Samyukta Jana Morch (SJM) and Communist Party of Nepal (Maoist) (CPN(M)). The methods of torture reported include repeated beatings, beatings to the soles of the feet, the placing of nettles (Shishnu) on the body and the use of rollers on the thighs. The constitutional provision limiting the duration of detention to 24 hours before remand was said to be frequently ignored. Many persons detained beyond the 24-hour period were said to be held incommunicado without relatives being informed of their detention, a condition which facilitates torture. In addition to that, the Special Rapporteur transmitted 22 individual cases.

Nigeria

150. By letter dated 6 May 1996 the Special Rapporteur advised the Government that he had received information according to which the use of torture and other forms of ill-treatment against persons detained for political reasons in Nigeria was widespread. Under State Security (Detention of Persons) Decree No. 2 of 1984, such detainees may be held indefinitely, incommunicado and without an opportunity to challenge the legality of their detention. In practice, the detainees were allegedly held incommunicado in overcrowded and unsanitary cells, with inadequate food and washing facilities and without exercise or exposure to fresh air. Persons suffering from injuries or illnesses were reportedly frequently denied necessary medical treatment.

151. The Special Rapporteur transmitted five individual cases. He made an urgent appeal in conjunction with the Chairman of the Working Group on Arbitrary Detention on behalf of 19 persons. He also made two other urgent appeals on behalf of two persons.

Observations

152. The Special Rapporteur draws attention to the deep concern expressed by the Human Rights Committee in respect of "cases of torture, ill-treatment, and arbitrary arrest and detention by members of the army and security forces and by the failure of the Government to investigate fully these cases, to prosecute alleged offences, to punish those found guilty and provide compensation to the victims or their families" (A/51/40, para. 284), as well as to its concern on the use of incommunicado detention (paras. 260 and 286). He supports the Committee's pertinent recommendations (paras. 298-300).

Pakistan

153. The Special Rapporteur transmitted 20 individual cases and 2 urgent appeals on behalf of 10 persons. The Government replied to one appeal concerning seven persons.

Observations

154. The Special Rapporteur visited Pakistan from 22 February to 3 March 1986 at the invitation of the Government. The report on the visit is contained in addendum 2 to the present report.

Paraguay

155. The Special Rapporteur transmitted four newly reported cases.

Peru

156. The Special Rapporteur transmitted nine newly reported cases as well as one case updated with new information provided by the sources. The Government replied to one case transmitted in 1995. In addition, the Special Rapporteur sent two urgent appeals on behalf of two persons. One of those appeals was sent in conjunction with the Special Rapporteur on the independence of judges and lawyers.

Observations

157. The Special Rapporteur continues to be concerned regarding the incidence of allegations of torture in Peru. He welcomes steps suggesting that police officials may not enjoy impunity from criminal or disciplinary action in respect of abuses inflicted on detainees; he would also welcome information indicating that members of the armed forces involved in similar activity do not enjoy such impunity.

158. In this connection, he joins the Human Rights Committee which expressed "its deepest concern with respect to the cases of ... torture, ill-treatment and arbitrary arrest and detention by members of the army and security forces, and by the Government's failure to investigate fully these cases, to prosecute alleged offences, to punish those found guilty and provide compensation to the victims and their families" (A/51/40, para. 354).

Philippines

159. The Government replied to seven cases that had been transmitted by the Special Rapporteur in 1995.

Poland

160. The Special Rapporteur transmitted two cases, to which the Government replied.

Portugal

161. The Special Rapporteur transmitted two newly reported cases to which the Government replied. The Government also replied to two cases transmitted in previous years.

Republic of Korea

162. By letter dated 24 January 1996 the Special Rapporteur advised the Government that he had received information according to which persons detained for political reasons were sometimes subjected to beatings, sleep deprivation, enforced physical exercises, and threats to themselves or their families. The Agency for National Security Planning (ANSP), the Military Security Command (MSC) and the police, were all said to employ such methods, primarily to coerce "confessions". Suspects were reportedly often held initially without a warrant or judicial supervision for the purpose of interrogation, which effectively resulted in short periods of incommunicado detention. It was during such periods that detainees were most vulnerable to torture or ill-treatment. In a number of cases in which persons were held under the National Security Law, the detainees had allegedly been denied access to lawyers or families for a preliminary period.

163. In a subsequent letter dated 24 September 1996 the Special Rapporteur informed the Government of reports that he had received indicating that during the course of police operations between 10 and 22 August 1996 against students from a number of universities holding a demonstration at Yonsei University for reunification of the Korean peninsula, a substantial number of persons were subjected to torture or other ill-treatment.

164. The Special Rapporteur transmitted 20 cases and received replies to 2 cases.

Observations

165. The Special Rapporteur notes the deep concern expressed by the Committee against Torture at its November 1996 session regarding reports of torture being inflicted on political suspects and commends the Committee's recommendations.

Romania

166. The Special Rapporteur informed the Government that he had received reports according to which improper investigations, defined by article 266 of

the Criminal Code as the use of promises, threats or violence against a person being investigated with a view to obtaining certain statements, were punishable by imprisonment for one to five years. Nevertheless, torture and ill-treatment were said to have taken place during detention, usually at police stations. Very often police officers had allegedly used force during interrogations in order to obtain confessions, which were regarded as prime pieces of evidence, particularly as Romanian legislation did not invalidate confessions obtained under duress.

167. Lawyers were said to be unable to have confidential discussions with their clients during their detention by the police, since a police officer was always present during their conversations. According to the Criminal Code, a member of the accused's family or a person designated by him should be informed within 24 hours of his arrest. It was said, however, that this provision was not always respected. In some cases, it was apparently the family who found the person arrested by looking in various police stations. During the period of pre-trial detention, the right to correspondence and visits was allegedly often used as a means of bringing pressure on the accused, and was granted in exchange for a confession.

168. It was said that when an investigation was embarked upon as a result of a complaint, it was rarely carried out thoroughly or impartially, and was often held up or prolonged without reason. This situation was allegedly due to the status enjoyed by police officers, who were held accountable for their acts only before the military courts. The investigation was entrusted to military prosecutors who allegedly openly favoured police officers in many cases. Furthermore, there was no procedure enabling the civilian victim to appeal to an independent court against the conclusions of a military prosecutor. His only recourse was to lodge a complaint with a higher military prosecutor.

169. In addition to the above the Special Rapporteur transmitted eight newly reported cases to the Government. The latter replied to four cases that had been transmitted in previous years.

Russian Federation

170. By letter dated 23 September 1996 the Special Rapporteur advised the Government that he had continued to receive information concerning the alleged torture or ill-treatment of persons during the course of military operations in the Chechen Republic.

171. The Special Rapporteur transmitted 25 individual cases. The Special Rapporteur also made an urgent appeal in conjunction with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative of the Secretary-General on internally displaced persons, concerning the situation in the Chechen Republic.

Follow-up to the visit of the Special Rapporteur to the Russian Federation

172. The Special Rapporteur visited the Russian Federation from 17 to 28 July 1994. His report on that mission is contained in document E/CN.4/1995/34/Add.1. During 1995 the Government had informed the Special

Rapporteur of measures that had been or were to be taken pursuant to the recommendations in his report (see E/CN.4/1996/35, paras. 142-148). During the present reporting period, the Government continued to inform the Special Rapporteur of such measures taken, pursuant to resolutions 1995/37 B, paragraph 11 and 1996/33 B, paragraph 11 of the Commission on Human Rights, concerning follow-up work relating to country visits.

173. On 22 January 1996 the Government informed the Special Rapporteur that under a decree signed by the President of the Russian Federation on 29 September 1995, State enterprises/institutions that applied criminal penalties in the form of deprivation of freedom were to become State unitary enterprises (federal State-funded enterprises) during 1996/97. Proposals to introduce the changes dictated by the decree would have to be tabled in the State Duma of the Federal Assembly. The Government subsequently informed the Special Rapporteur that Council of Europe officials and experts and officials of the Russian Ministry of Internal Affairs had participated in the fourth session of the Steering Committee on reform of the custodial system in the Russian Federation, held in Moscow from 20 to 22 February 1996. The issues addressed included those concerning personnel involved in the enforcement of penalties, reducing the number of inmates in prison institutions and conditions in which prisoners are held. The Committee decided that proposals for changes in legislation must not lead to an increase in the number of prison inmates and steps must be taken so that legislation contains clear criteria concerning conditions in places of detention and to ensure that courts adhere to those criteria in accordance with the requirements of article 5 of the European Convention on Human Rights. The Committee also noted the importance of efforts to improve the working conditions of staff in places of detention, thereby making it possible to raise the entrance requirements for work in those institutions. It was agreed to convene the next meeting on 6 and 7 May 1996 in Strasbourg and to hold a future seminar on questions pertaining to the protection of staff of custodial institutions.

174. On 27 September 1996 the Government advised the Special Rapporteur that on 5 June 1996 the upper house of the Russian Federation's Federal Assembly had adopted a decision suggesting to the Russian Government that it take urgent measures to provide sufficient funds for the penal system to operate normally and that it provide instructions to the relevant committees of the Federation Council to examine proposals from the Procurator General of Russia for legislation aimed at strengthening human rights safeguards and reinforcing legality in the Russian penal system and to prepare them for submission to the State Duma. The decision also served as a basis for an appeal from the Federation Council to legislative (representative) and executive organs of State power of the constituent entities of the Russian Federation that the situation regarding the provision of supplies and equipment to the Russian penal system which had deteriorated markedly in recent years; the conditions of detention in remand centres (sizos) under the control of the Russian Ministry of Internal Affairs (MVD) constituted flagrant violations of human rights and of the law and the international obligations of the Russian Federation. The Federation Council called on the legislative and executive organs of State power of the constituent entities of the Russian Federation to assist in repairing, modernizing and building MVD sizos in their territories and in supplying them with food and medicine in at least the minimum necessary quantities.

175. The Government also stated that early in June 1996 the Constitutional Court of the Russian Federation had declared unconstitutional the provision of the Russian Code of Criminal Procedure on the time within which persons deprived of their freedom must be acquainted with the material relating to their cases. However, in view of the risk that the immediate repeal of that provision would leave no means of countering the delaying of proceedings by prisoners, the Court ruled that its decision should be implemented within six months. By that time the Federal Assembly should have amended the existing law on acquainting prisoners with the material concerning their cases, perhaps even by adopting a new Code of Criminal Procedure. On 13 June 1996, the President of the Russian Federation signed legislation providing that the new Criminal Code would come into force on 1 January 1997. The new Criminal Code was distinguished by its humanism, as noted by numerous independent experts, including specialists from the Council of Europe. Of fundamental importance was paragraph 2 of article 7, "The Principle of Humanism", providing that: "Neither punishment nor other measures under criminal law undertaken against a person who has committed a crime shall have as their purpose the causing of physical suffering or the degradation of human dignity".

Observations

176. The Special Rapporteur appreciates the continuing cooperation of the Government in respect of matters within his mandate. He acknowledges the positive measures that have been taken to address the problems he identified in the report on his 1994 visit, particularly in respect of the torturous conditions in some remand prisons (sizos). The fact remains that two years later these conditions seem to persist. In this connection, he notes the concern expressed by the Committee against Torture at its November 1996 session in respect of overcrowding in prisons, made worse by the poor and unsanitary conditions prevailing therein. He repeats his call for urgent measures to be taken to bring immediate relief, such as releasing at once all first-time, non-violent suspected offenders. He also notes the Committee's concern about widespread allegations of torture and ill-treatment of suspects and persons in custody with a view to secure confessions, a problem especially notable in Chechnya, and supports the Committee's recommendations.

Saudi Arabia

177. The Special Rapporteur made 5 urgent appeals on behalf of 10 persons. The Government replied to 4 of the appeals on behalf of 5 persons, as well as to 3 urgent appeals on behalf 13 persons transmitted in 1995.

Observations

178. The Special Rapporteur appreciates the Government's responses, but is concerned at the absence of any information denying the existence of incommunicado detention apparently without limit. As to the question of corporal punishment and the Special Rapporteur's mandate, he draws attention to paragraphs 5 to 11 of the present report.

Senegal

179. The Special Rapporteur informed the Government that he had received reports indicating that members of the police deliberately resorted to physical violence in the hours or days that followed the arrest of persons. It appeared that their purpose was to obtain confessions, and that the victims were both ordinary law detainees as well as political detainees, particularly those accused in connection with the conflict in Casamance.

180. It would appear that several gendarmes and police officers were arrested at Dakar during 1995 as a result of complaints of torture and ill-treatment. In general, however, the authorities allegedly showed very little zeal in opening an inquiry and impunity was widespread in the absence of an exhaustive investigation. Moreover, it was said that allegations of torture were not investigated and that confessions obtained in that way were taken into account in convicting the accused. These practices were allegedly facilitated by the existence of a procedure under which suspects could be held in custody incommunicado for a maximum period of four days. In the case of acts involving State security, the period of initial detention incommunicado could be extended to eight days. It was said that even this period was in some cases once again extended illegally. It was during the period of detention incommunicado, when the suspect had access neither to a lawyer nor sometimes to a doctor, that the great majority of cases of ill-treatment occurred.

181. In addition to the above the Special Rapporteur transmitted four individual as well as one collective case. He also retransmitted one case updated with additional information received from the sources.

Slovakia

182. The Special Rapporteur transmitted one case, to which the Government provided a reply.

Spain

183. The Special Rapporteur informed the Government that he had received reports indicating that the manner in which forensic physicians carried out examinations of detainees was sometimes irregular. It was reported that these examinations were frequently superficial, did not take due account of the individual's physical and mental condition, and were not always carried out in private, i.e. without the presence of police officers. In addition, cases had occurred in which these physicians' reports had contradicted reports prepared by other physicians whom the detainees had consulted on their own initiative. The reports on Spain prepared by the European Committee for the Prevention of Torture were said to contain examples of this situation, on which the Committee had issued recommendations.

184. In addition to the above the Special Rapporteur transmitted two newly reported cases and asked the Government for further information regarding four others. The Government replied to all of them.

Sudan

185. By letter dated 13 September 1996 the Special Rapporteur advised the Government that he had received information indicating that the use of torture in the Sudan remained widespread. Although in March 1995 the secret detention centre known as "City Bank" or "the Oasis" (al-Waha) was reportedly closed and its detainees transferred to a section of Khober prison to be administered by the security authorities, many other secret detention centres were said to continue to operate throughout the country. Under new legislation promulgated in 1994 and amended in 1995, to replace the 1990 National Security Act, persons reportedly could be detained, without notice of the reasons for detention, for three months by order of the National Security Council or "its authorized representative" approved by a magistrate. The three-month detention could be renewed once without magisterial approval and further periods of removal were allowed with the approval of a "competent judge". Detainees reportedly did not have the right to challenge judicially the legality of their detention. During these periods of pre-trial detention, persons were said to be held frequently incommunicado, a condition which leaves them vulnerable to torture.

186. The Special Rapporteur transmitted 25 individual cases and nine urgent appeals on behalf of 66 persons. Six appeals were joined by the Special Rapporteur on the situation of human rights in the Sudan, two were joined by the Special Rapporteur on extrajudicial, summary or arbitrary executions and two were joined by the Chairman of the Working Group on Arbitrary Detention. The Government replied to 1 of the appeals concerning 7 persons and to 14 cases transmitted in previous years.

Observations

187. In the light of the information he has received, the Special Rapporteur considers that the conclusion of the Special Rapporteur on the situation of human rights in the Sudan in his 1996 report to the Commission remains applicable: "torture at the hands of armed and security forces, as well as inhuman and degrading treatment of detainees, has been a routine practice over the last few years" (E/CN.4/1996/62, para. 96(c)).

Sweden

188. The Special Rapporteur transmitted one urgent appeal on behalf of one person.

Switzerland

189. The Special Rapporteur transmitted three newly reported cases. In addition to that he sent one urgent appeal, in conjunction with the Special Rapporteur on the situation of human rights in the Sudan, on behalf of one person. A reply from the Government was received too late for inclusion in the addendum to the report.

Syrian Arab Republic

190. The Special Rapporteur transmitted one urgent appeal on behalf of two persons, to which the Government provided a reply.

Tunisia

191. The Special Rapporteur informed the Government of reports he had received according to which the Tunisian judicial system appeared to be unaware that detainees had alleged that their statements were obtained by torture, particularly when they were being held in custody - even when, weeks or months after the arrest, the detainee bears physical signs tending to prove that he was ill-treated. In the rare cases when medical examinations were carried out, the doctors were designated by the authorities, usually several weeks after the events in question took place. It was also said that the few investigations carried out into allegations of torture and ill-treatment did not provide all the necessary guarantees, particularly as regards impartiality, and the results were never made public.

192. In addition to the above the Special Rapporteur transmitted eight newly reported cases and retransmitted three cases updated with additional information provided by the sources. The Government replied to all of them. Moreover, the Special Rapporteur sent two urgent appeals on behalf of two persons and the Government replied to one of them.

Observations

193. The Special Rapporteur appreciates the consistent cooperation of the Government, evidenced by its responses. Nevertheless, the persistence of allegations over the years and the widespread doubts as to the evidence of medical examinations conducted by doctors in government service suggest the importance of ensuring the monitoring of the detention and interrogation practices of law enforcement agencies by an independent body and permitting access of independent physicians to detainees at their request.

Turkey

194. By letter dated 8 February 1996 the Special Rapporteur reminded the Government of the general allegations he had transmitted in 1995 (see E/CN.4/1996/35, paras 174-176). He also advised the Government that he had received information indicating that many examinations conducted by State-appointed doctors of the Forensic Medicine Institute appeared to be flawed. The medical examinations were reported to be often carried out in the presence of soldiers or police officers from the units responsible for the original interrogation under torture. Many such examinations were said to be perfunctory and in a number of cases misleading certificates were alleged to have been produced. On 29 May 1996 the Government replied that the allegations regarding medical reports were devoid of any element of truth. The Ministry of Health had taken measures to ensure that medical reports were safely transmitted to the prosecutor and that their contents were withheld

from security personnel. A project to provide training for practitioners in 31 provinces had been initiated and the Ministry of Health had issued instructions that all hospitals with over 100-bed capacity should have forensic medicine available.

195. By the same letter, the Government asserted that it attached great importance to the prevention of ill-treatment during periods of detention in cases within the purview of the State Security Courts (SSC). A programme introduced by the Government on 22 March 1995 had established an Under-Secretariat for Human Rights and had proposed legislation of some 20 bills to reinforce human rights protection. Pending the consideration of the bills, written directives issued by the Prime Ministry on 13 February 1995 would remain in force, including the following: that under no circumstances may suspects be subjected to ill-treatment; during detention, all time limits and measures prescribed by law shall be strictly observed; modern methods which are used in European countries and the United States shall be applied during interrogation; all medical reports shall be drawn in strict conformity with the circulars issued by the Ministry of Health; suspects shall have access to legal counsel as per relevant laws; police detention centres shall be controlled periodically; all detainees shall be registered; detainees shall be placed in sufficiently large units conforming to health standards; all law enforcement officials who ill-treat detainees shall immediately be subjected to legal action; all governors and security authorities shall constantly supervise their subordinate police departments and inform the Ministry of Interior of the result of their controls so as to ensure strict adherence to the aforementioned measures.

196. With a view to implementing the European Convention on Human Rights and preventing torture and ill-treatment, 20 police officers had been sent to member countries of the Council of Europe for training and seminars on human rights issues had also been organized for security personnel. Human rights had been introduced as a compulsory course in the curricula of primary and secondary schools and as an elective for high schools. At the request of the Prime Minister, the High Advisory Council for Human Rights had prepared a study on effective and humane interrogation methods and the Ministry of Interior had initiated studies for the application of the report. During 1995, 291 cases had been registered against public officials under articles 243 and 245 of the Turkish Penal Code prohibiting torture and ill-treatment. Of these cases, 20 had resulted in convictions, 49 in acquittals and the remaining cases were pending.

197. On 9 October 1996 the Government informed the Special Rapporteur that in accordance with changes that had been made to article 8 of the Anti-Terror Law calling for the revision of sentences passed under its former provisions, 269 persons had been released and 1,408 persons had seen their sentences reduced. On 23 October 1996 the Government informed the Special Rapporteur that the periods of detention in State Security Courts would be reduced to fall into line with other democratic countries in Europe. Additional reforms would also be made to the State Security Court system.

198. By letter dated 11 November 1996 the Special Rapporteur, on behalf of himself and of the Chairman of the Board of the United Nations Voluntary Fund for Victims of Torture, expressed concern to the Government over information

received on the prosecution of officials of the Human Rights Foundation of Turkey (HRFT), a non-governmental organization operating four torture rehabilitation centres. Mustafa Cinkilic, the Adana representative of HRFT, was charged in connection with the operation of the Adana rehabilitation centre without licensing from the Department of Health. Tufan Köse, the doctor in charge at the HRFT Adana office, was charged with failing to notify the judiciary or police magistrate that 167 patients examined by him had claimed to have been subjected to torture and with failing to make certain information about those patients available when requested to do so by the Public Prosecutor. Their trial was scheduled to reconvene on 17 January 1997. (Similar charges of opening an unlicensed health centre, brought by the Istanbul Beyoğlu Public Prosecution Office against the Istanbul representative of HRFT, Şükran Akin, reportedly resulted in his acquittal on 1 November 1996.) In addition, notice was reportedly served upon HRFT by the head of the Department for Annexed and New Foundations that the organization was to be investigated for "collaboration" with various non-governmental and intergovernmental agencies, including the United Nations Voluntary Fund for Victims of Torture, without having obtained permission from the authorities. It was alleged that the legal actions constituted elements of a concerted effort on the part of a number of governmental ministries to curtail or halt altogether the activities of HRFT and that an inter-ministry meeting had been convened for this purpose. The principle expressed in article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and in Commission on Human Rights resolution 1996/33 that national legal systems should ensure that the victims of acts of torture are afforded medical rehabilitation appeared to be strained, if not breached, by the actions of the Government. Many patients might fear that adverse consequences could result from disclosure of medical records and so might avoid seeking treatment. In addition, as principles of medical ethics might compel doctors under circumstances arising in the cases of some HRFT patients to maintain strict confidentiality, they might be deterred from rendering their services for fear of prosecution for behaving in accordance with professional ethics. The Special Rapporteur and Chairman accordingly appealed to the Government to refrain from taking action against HRFT personnel that could effectively limit the activities of rehabilitation service providers or restrict the opportunities for torture victims to receive rehabilitation services and to take care not to inhibit the flow of scarce financial resources to Turkey earmarked for torture rehabilitation.

Observations

199. The Special Rapporteur appreciates the Government's responses, but continues to be concerned at the apparently widespread practice of torture in Turkey. In this respect, he notes the public statement issued at the end of 1996 by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The Committee, after visiting places of detention on a number of occasions over recent years, most recently in September 1996, asserted that "resort to torture and other forms of severe ill-treatment remains a common occurrence in police establishments in Turkey. To attempt to characterize the problem as one of isolated acts of the kind which can occur in any country - as some are wont to do - is to fly in the face of the facts". 3/ The Special Rapporteur was particularly struck by the CPT's observation that "the cases of seven persons (four women and three men)

medically examined at Sakarya Prison, where they had very recently arrived after a period of custody in the Anti-Terror Department at Istanbul Police Headquarters, must rank among the most flagrant examples of torture encountered by CPT delegations in Turkey". 4/ He shares the CPT's concern that even the bill that would provide for access to a laywer after four days permits a delay that is "not acceptable". 5/

200. In the light of the Government's consistent reliance on reports from officially appointed doctors to the effect that there has been no torture or ill-treatment (a conclusion not, to the Special Rapporteur's knowledge, normally within medical competence even in respect of physical torture or ill-treatment), he endorses the following statement of the CPT: "the forensic doctor must enjoy formal and de facto independence, have been provided with specialized training and been allocated a mandate which is sufficiently broad in scope. If these conditions are not met - as is frequently the case - the present system can have the perverse effect of rendering it all the more difficult to combat torture and ill-treatment" (para. 6). The Government has still not agreed to extend an invitation to the Special Rapporteur to visit the country.

Uganda

201. The Special Rapporteur made an urgent appeal on behalf of one person.

United Arab Emirates

202. The Special Rapporteur made an urgent appeal on behalf of one person.

United Kingdom of Great Britain and Northern Ireland

203. The Special Rapporteur transmitted five individual cases, to which the Government provided replies.

United Republic of Tanzania

204. By letter dated 10 June 1996 the Special Rapporteur informed the Government that he had received reports regarding instances of torture and other ill-treatment alleged to have occurred in Zanzibar following the general election in October 1995. Activists from the opposition Civic Unit Front (CUF) were said to have been particularly targeted by the police, the security services and members of the youth wing of the ruling party (CCM).

205. The Special Rapporteur transmitted 12 individual cases, to which the Government provided replies.

Uzbekistan

206. The Special Rapporteur transmitted three individual cases. He also made an urgent appeal in conjunction with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the independence of judges and lawyers on behalf of four persons.

Venezuela

207. The Special Rapporteur transmitted 37 newly reported cases of incidents of torture. The Government provided replies on 20 cases transmitted in previous years, some of them involving several persons.

Observations

208. The Special Rapporteur visited Venezuela from 7 to 16 June 1996, at the invitation of the Government. The report of the visit is contained in addendum 3 to the present report.

Viet Nam

209. The Special Rapporteur made an urgent appeal in conjunction with the Special Rapporteur on extrajudicial, summary or arbitrary executions on behalf of three persons, to which the Government replied. He also made an urgent appeal in conjunction with the Chairman of the Working Group on Arbitrary Detention on behalf of one person, to which the Government replied.

Yugoslavia

210. By letter dated 6 August 1996 the Special Rapporteur advised the Government that he had continued to receive information indicating that ethnic Albanians had been subjected to ill-treatment and torture, including severe beatings and electric shocks, by police officers in Kosovo. The situation was said to be particularly grave in the district of Ştimjle since October 1995, when a new commander assumed his position at the Ştimjle police station.

211. The Special Rapporteur transmitted eight individual cases. He also made two urgent appeals in conjunction with the Chairman of the Working Group on Arbitrary Detention and the Special Rapporteur on the situation of human rights in the former Yugoslavia. The Government replied to one of those appeals on behalf of six persons. He sent another urgent appeal in conjunction with the Special Rapporteur on the situation of human rights in the former Yugoslavia on behalf of three persons.

Observations

212. The Special Rapporteur appreciates the reply he received from the Government. He continues to be concerned at the persistence of allegations of torture or ill-treatment of persons in custody, especially in Kosovo. He supports the recommendation of the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia that "provisions permitting suspects to be held for 72 hours in police custody without judicial supervision should be brought into line with the narrower limits set in international standards, notably in the International Covenant on Civil and Political Rights" (E/CN.4/1997/9, para. 131).

Zaire

213. The Special Rapporteur transmitted 15 newly reported cases and retransmitted the cases already sent in 1995. In addition, he sent 5 urgent

appeals, most in conjunction with the Special Rapporteur on the situation of human rights in Zaire, involving 13 individuals or groups. He received no replies from the Government.

Observations

214. In the light of the information he has received, the Special Rapporteur considers that the conclusion of the Special Rapporteur on the situation of human rights in Zaire in his 1996 report to the Commission remains applicable: "torture, cruel, inhuman and degrading treatment, and the rape of women prisoners ... have not ceased" (E/CN.4/1996/66, para. 121).

Zambia

215. The Special Rapporteur made an urgent appeal on behalf of two persons, to which the Government provided a reply.

Other communications: information transmitted to the Palestinian Authority

216. The Special Rapporteur made 5 urgent appeals on behalf of 11 persons.

Concluding remarks

217. The Special Rapporteur again reiterates the recommendations summarized in his report to the Commission at its fifty-first session (E/CN.4/1995/34, para. 926) and reminds Governments of how some of their responses to his communications could be focused to facilitate his work, as indicated in his report to the fifty-second session of the Commission (E/CN.4/1996/35, paras. 198-201).

Notes

1/ Approved by Economic and Social Council resolutions 663 C (XXIV) of 31 July 1957 and 2078 (LXII) of 13 May 1977.

2/ General Comments 7 (16) and 20 (44). See Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40) and Forty-seventh Session, Supplement No. 40 (A/47/40).

3/ Council of Europe, press release 707 (96), 6 December 1996.

4/ Ibid.

5/ Ibid.

Annex

METHODS OF WORK OF THE SPECIAL RAPPORTEUR ON TORTURE

1. The Special Rapporteur's methods of work are based on his mandate as stipulated originally in Commission on Human Rights resolution 1985/33 and as developed by the Commission in numerous further resolutions. The parameters of his work are set forth in the International Bill of Human Rights and other United Nations instruments containing provisions that guarantee the right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment.

2. The Special Rapporteur carries out the following main types of activity:

(a) Seeking and receiving credible and reliable information from Governments, the specialized agencies and intergovernmental and non-governmental organizations;

(b) Making urgent appeals to Governments to clarify the situation of individuals whose circumstances give grounds to fear that treatment falling within the Special Rapporteur's mandate might occur or be occurring;

(c) Transmitting to Governments information of the sort mentioned in (a) above indicating that acts falling within his mandate may have occurred or that legal or administrative measures are needed to prevent the occurrence of such acts;

(d) carrying out visits *in situ* with the consent of the Government concerned.

3. An urgent appeal is made on the basis of information received by the Special Rapporteur expressing concern about the fact that a person is at risk of being subjected to torture. Such concern may be based, *inter alia*, on accounts by witnesses of the person's physical condition while in detention, or on the fact that the person is kept incommunicado, a situation which may be conducive to torture. The Special Rapporteur, when making a determination as to whether there are reasonable grounds to believe that an identifiable risk of torture exists, takes into account a number of factors, any one of which may be sufficient, though generally more than one will be present. These factors include: (a) the previous reliability of the source of information; (b) the internal consistency of the information; (c) the consistency of the information with information on other cases from the country in question that has come to the Special Rapporteur's attention; (d) the existence of authoritative reports of torture practices from national sources, such as official commissions of inquiry; (e) the findings of other international bodies, such as those established in the framework of the United Nations human rights machinery; (f) the existence of national legislation, such as that permitting prolonged incommunicado detention, that can have the effect of facilitating torture; and (g) the threat of extradition or deportation, directly or indirectly, to a State or territory where one or more of the above elements are present.

4. The urgent appeal procedure is not per se accusatory, but essentially preventive in nature and purpose. The Government concerned is merely requested to look into the matter and to take steps aimed at protecting the right to physical and mental integrity of the person concerned, in accordance with the international human rights standards.

5. In view of the fact that the urgent appeal contains information that is extremely time-sensitive, the appeal is addressed directly to the foreign affairs ministry or department of the country concerned.

6. The Special Rapporteur, where appropriate, sends urgent appeals jointly with other organs of the United Nations human rights machinery.

7. The Special Rapporteur transmits to Governments summaries of all credible and reliable information addressed to him alleging individual cases as well as practices of torture. At the same time he requests the Governments to look into those allegations and to provide him with relevant information on them. In addition, the Special Rapporteur urges Governments to take steps to investigate the allegations; to prosecute and impose appropriate sanctions on any persons guilty of torture regardless of any rank, office or position they may hold; to take effective measures to prevent the recurrence of such acts; and to compensate the victims or their relatives in accordance with the relevant international standards.

8. The Special Rapporteur analyses responses from Governments and transmits the contents to the sources of the allegations, as appropriate, for comment. If required, dialogue with the Government is then pursued further.

9. The Special Rapporteur does, where appropriate, acknowledge the existence of persistent acts of violence, including torture, committed by armed groups when these are brought to his attention. However, in transmitting allegations of torture he deals exclusively with Governments, as the authorities bound by the regime for the international legal protection of human rights.

10. The Special Rapporteur maintains contact and, where appropriate, engages in consultation with related bodies and mechanisms of the United Nations human rights machinery, such as the Committee against Torture and other organs of the Commission on Human Rights, the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture and the Commission on Crime Prevention and Criminal Justice.

11. The Special Rapporteur does not, as a rule, seek to visit a country in respect of which the United Nations has established a country-specific mechanism such as a special rapporteur on the country, unless a joint visit seems to both to be indicated. As regards countries where the mandates of other thematic mechanisms may also be affected, he seeks consultation with them with a view to exploring with the Government in question, either jointly or in parallel, the possibility of a joint visit. Similarly, where the Committee against Torture is considering the situation in a country under article 20 of the Convention against Torture and Other Cruel, Inhuman or

Degrading Treatment or Punishment, especially if that consideration involves a visit or possible visit to the country in question, the Special Rapporteur does not seek a visit.

12. The Special Rapporteur carries out visits to countries on invitation, but also takes the initiative of approaching Governments with a view to carrying out visits to countries on which he has received information indicating the existence of a significant incidence of torture. Such visits allow the Special Rapporteur to gain more direct knowledge of cases and situations falling within his mandate, and are intended to enhance the dialogue between the Special Rapporteur and the authorities most directly concerned, as well as with the alleged victims, their families and their representatives and concerned non-governmental organizations. The visits also allow the Special Rapporteur to address detailed recommendations to Governments.

13. With regard to countries in which visits have been carried out, the Special Rapporteur periodically reminds Governments concerned of the observations and recommendations formulated in the respective reports, requesting information on the consideration given to them and the steps taken for their implementation, or the constraints which might have prevented their implementation.

14. The Special Rapporteur reports annually to the Commission on Human Rights on the activities which he has undertaken since the Commission's previous session. He may also make observations on specific situations, as well as conclusions and recommendations, where appropriate.